



FAIRCLOTH TO RAD

(PROJECT BASED RENTAL ASSISTANCE
SUBSIDY PILOT PROGRAM)

**NOTICE OF FUNDING AVAILABILITY (NOFA)
APPLICATION**

November 1, 2023



Faircloth to RAD Rental Subsidy Program NOFA Application

| Applicant Information | | | | |
|---|-------------|-----------|------------------------|------------|
| Date of Application: | | | | |
| Contact Name: | | | | |
| Address: | | City: | | State: |
| Zip: | Email: | Phone: | | |
| Proposed Rental Opportunity | | | | |
| Property Name (the "Property"): | | | | |
| Property Address (including Zip): | | | | |
| Property Age (If applicable): | | | | |
| Council District: | | | | |
| Neighborhood Planning Unit (NPU): | | | | |
| New Construction: <input type="checkbox"/> Yes <input type="checkbox"/> No | | | | |
| If you propose bundling multiple properties to create a portfolio, please include additional names, addresses, age of other properties, council districts, and NPU. | | | | |
| Specify if the property(s) serve a specific demographic for residents (elderly, homeless, families, etc.): | | | | |
| Number of units by bedroom size and square footage for each type of unit: | | | | |
| Unit Type | Total Units | RAD Units | Other Affordable Units | Sq Footage |
| Studio | | | | |
| 1 Bedrooms | | | | |
| 2 Bedrooms | | | | |
| 3 Bedrooms | | | | |
| 4 Bedrooms | | | | |
| 5 Bedrooms | | | | |
| Totals | | | | |
| Total Number of Bedrooms in the RAD Units: | | | | |
| Total Number of Buildings in which the RAD Units will be located: | | | | |

| | | |
|--|---|---|
| Targeted Unit Availability Date | | |
| Identify the building safety and security measures in place or planned (e.g., lighting, fencing and security systems): | | Current occupancy % of the property(s) (if applicable): |
| List of property amenities (e.g., washer/dryer, utilities, common areas, etc.): | What neighborhood amenities are available within a 1-mile radius nearby? (e.g., transportation, education, retail health, etc.) | List of public transportation options within a 1-mile radius? |
| Ownership of Rental Opportunity | | |
| Please provide a comprehensive description of all proposed legal owner entities for the property(s). Please include an organizational chart for each property. | | |
| Community Engagement | | |
| Does the proposed development have community/neighborhood support? | | |
| Please describe in detail all community engagement efforts: | | |

Site – Based Administration and Management Plan

**Experience in management of subsidized housing units is strongly recommended. The owner/property manager will have to perform all the site-based administration functions to include tenant eligibility, income determination, rent calculation and collection, criminal screening, lease enforcement, and waitlist management. Applicants with no affordable housing management experience will be required to present a viable plan of action demonstrating the ability to administer the housing program.*

Please provide the name and corporate address of the proposed management company:

Provide name address and for other properties where the management company is providing property management services.

| Name | Address | Affordable Units (If applicable) | Total Units | # of Years Managed |
|------|---------|-------------------------------------|-------------|-----------------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

Is there a Condominium or Neighborhood Association? If so, please describe and provide copies of any binding agreements between the association and third party?

Uniform Federal Accessibility Standards (UFAS)

The property must adhere to UFAS standards to be eligible for RAD qualification. This includes ensuring there are 5% accessible units for individuals with mobility impairments and 2% accessible units for those with hearing and visual impairments. Compliance extends to all interior and exterior common areas and all means of building egress under Section 504. You can find the current UFAS requirements linked here:

<https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-aba-standards/background/ufas?highlight=WyJ1ZmFzIlQ>

Proposed number of UFAS designated units per the required guidelines:

Proposed number of UFAS unit designated parking spaces:

Financial Feasibility

Please include a proposed operating budget and 20 year proforma for the property which identifies the proposed rent(s) by unit size (in terms of bedroom count).

Please list market comps within a two-mile radius in support of your rent request:

Comp 1:

Property Name: _____ Address: _____

| Unit Type | Sq Footage | Rent |
|------------|------------|------|
| Studio | | |
| 1 Bedrooms | | |
| 2 Bedrooms | | |
| 3 Bedrooms | | |
| 4 Bedrooms | | |
| 5 Bedrooms | | |

Comp 2:

Property Name: _____ Address: _____

| Unit Type | Sq Footage | Rent |
|------------|------------|------|
| Studio | | |
| 1 Bedrooms | | |
| 2 Bedrooms | | |
| 3 Bedrooms | | |
| 4 Bedrooms | | |
| 5 Bedrooms | | |

Comp 3:

Property Name: _____ Address: _____

| Unit Type | Sq Footage | Rent |
|------------|------------|------|
| Studio | | |
| 1 Bedrooms | | |
| 2 Bedrooms | | |
| 3 Bedrooms | | |
| 4 Bedrooms | | |
| 5 Bedrooms | | |

Please describe in detail any current debts and/or liens on the Property.

Are any utilities provided at the Property(s) by owner? If so, please list:

Do you currently receive any local/state/federal funding or rental assistance? If so, please identify.

| Disclosures | | |
|---|----------|--------|
| List of current multifamily properties you own (Please include Name, Address, # of units, whether the property has affordable units and # of years owned) | | |
| Have you ever experienced a foreclosure or bankruptcy? If yes, please explain. | | |
| Do you have any current liens or judgements against any other properties? If yes, please explain. | | |
| References Please provide (3) references | | |
| Name: | Address: | Phone: |
| | | |
| | | |
| | | |
| I authorize the verification of all information provided on this form | | |
| Signature of applicant: | | Date: |
| Signature of co-applicant: | | Date: |

How to Submit Your Application

- A. Applications can be submitted at any time until Atlanta Housing, at its sole discretion, determines the NOFA will no longer be available.
- B. Applicants should submit one (1) electronic (soft) copy of their applications to:

The Housing Authority of the City of Atlanta, Georgia
Sopheria Lambert, Team Lead
(sopheria.lambert@atlantahousing.org)
Contracts & Procurement Department
230 Wesley Dobbs Avenue, N.E.
Atlanta, Georgia 30303

- C. In the event an applicant has multiple strategies and deal terms for a property or cluster of properties, up to the designated 50-unit threshold; up to 3 applications detailing the alternative property strategy arrangements may be submitted for evaluation.
- D. AH reserves the right to:
 - 1. Accept or reject any or all applications, discontinue this NOFA process and/or re-advertise this NOFA without obligation or liability to any Applicant;
 - 2. Award multiple agreements.

FAIRCLOTH TO RAD PROGRAM OVERVIEW

PART 1 – OVERVIEW

1.2 Background

The City of Atlanta has a robust economy that has experienced substantial economic investment and population growth in recent years. With the economy continuing to trend upward, Atlanta has attracted people from across the nation. Unfortunately, Atlanta's growth has also led to rising home prices and rents while incomes have remained flat, driving greater demand for both the preservation and construction of affordable single and multifamily rental housing. Data compiled by the Federal Reserve Bank of Atlanta suggests Atlanta is losing approximately 1,500 affordable units annually. The Housing Authority of the City of Atlanta ("AH") is well positioned to actively pursue options that create or preserve affordable housing units, and AH remains steadfast in its commitment to do its part to help Atlanta address this critical need.

1.3 Purpose

Utilizing its Moving to Work ("MTW") funding authority and flexibility, AH is planning to implement the Faircloth to Rental Assistance Demonstration ("RAD") Conversion Strategy to develop new affordable public housing units in replacement of units previously removed from AH's affordable housing inventory. The United States Department of Housing and Urban Development ("HUD") has developed an innovative path for Public Housing Authorities ("PHAs") to leverage their existing public housing "Faircloth Authority" to create new rent-assisted housing through the RAD Program. Faircloth to RAD ("FTR") conversions will allow AH and its development partners more readily access financing for the development of new affordable units. Under the HUD's Faircloth limit guidance, AH is authorized to redevelop previously demolished affordable public housing units and receive additional operating funds to operate these replacement units as safe, decent, sanitary, and affordable for low-income families. In a Faircloth to RAD transaction, PHAs are allowed to develop public housing units using HUD's traditional public-housing mixed finance program with pre-approval to convert the property to a long-term Section 8 contract following construction.¹ With early-stage RAD conversions approvals, lenders and investors will have the revenue certainty through familiar Section 8 contracts to underwrite the construction of these projects.

This Notice of Funding Availability ("NOFA") is a pilot program of AH that will support new affordable units through possible multiple awards. The total number of units will be subject to funding availability and AH's strategic needs. The Faircloth to RAD subsidy funding is repurposed ACC public housing funding for property operations, maintenance and rental subsidy. Units approved pursuant to this strategy may be subsidized for an initial term up to 20 years and subject to automatic renewal requirements.

For an in-depth review of the of the FTR program please see Attachment A – HUD Faircloth-to-RAD resource Guide.

1.4 Eligible Developments

Eligible developments are limited to those that contain "new" units. This means that the proposed development must be (i) new construction, (ii) existing housing not otherwise subsidized by HUD or (iii) substantial rehabilitation of a vacant building(s), including but not limited to single family, multi-family, and housing in a mixed-use building or adaptive reuse of a non-residential structure.

¹ Note: the term "construction" refers to new construction, acquisition transactions with rehabilitation work or a acquisition without rehabilitation. (See U.S. Department of Housing and Urban Development's *Faircloth-to-RAD Conversions Guide*, pg. 2.

- a. All units in the development receiving FTR subsidy must be a minimum of an efficiency sized unit.
- b. The development must comply accessibility requirements specified at 24 CFR §905.312.
- c. The development, if applicable, must comply with 24 CFR §905.604 including the Comparability provisions of 24 CFR §905.604(g).
- d. There can be no construction work commenced on the proposed development at the time of or after proposal submission.

1.5 RAD PBV Rents

Applicants may request FTR subsidy for all or some of the units in the proposed development. If approved, constructed, and converted to RAD, the initial public housing subsidy associated with the development will be converted to a payment under a FTR HAP contract with AH. Applicants applying for FTR should assume 60% Area Median Income (AMI) rent levels (Atlanta-Sandy Springs-Roswell) for purposes of development budgets. Access this link for assistance in determining the latest 60% AMI gross rent levels <https://ric.novoco.com/tenant/rentincome/calculator/z2.jsp>. If the Owner/Developer plans to pay for the utilities, a gross rent will be paid. If the resident will be responsible for paying their utilities, a net rent will be paid, subtracting the utility allowance from the gross rent.

Assisted units may not be occupied until after RAD conversion. RAD conversion cannot occur until after DOFA, HUD approval of the assisted units as public housing units and the RAD transaction is complete. Subsidy payments for the assisted units under the FTR HAP Contract cannot occur until after the Certificate of Occupancy is obtained and tenant screening and income verification requirements are met.

1.6 Third Party Costs

All successful proposers will be required to pay for AH's third-party costs associated with reviewing and closing the transaction. This includes, but is not limited to, outside legal counsel and other consultants deemed necessary or advisable by AH to review and complete the Mixed Finance Transaction.

1.7 Subsidy Layering Review

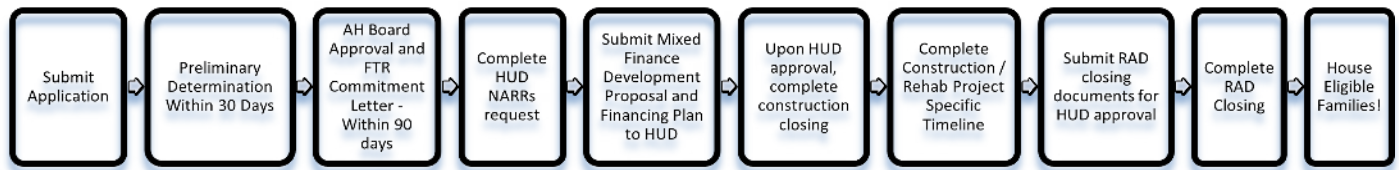
HUD or an independent entity approved by HUD must conduct a subsidy layering review and determine that the assistance is in accordance with HUD subsidy layering requirements. The subsidy layering review is intended to prevent excessive public assistance by combining (i.e., layering) the housing assistance payment subsidy with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits.

1.8 Application Process and Timeline

Under the current Notice of Funding Availability ("NOFA"), AH is seeking Property Owners/Developers ("Applicants") of residential units for eligible residents earning up to 80% Area Median Income ("AMI") who can provide residential units through new construction, existing housing not otherwise subsidized by HUD, or repurposing of other existing buildings and are interested in receiving AH subsidy for their rental units, through either subsidy-only arrangements, or subsidy with a financing and/or investment component. AH will also consider Applicants who can bundle several units in proposed clusters of multiple buildings. If an application is administratively approved, AH must present the application to its Board of Commissioners for approval. Following this Board approval, AH will execute a conditional commitment letter, subject to HUD

approval, to provide subsidy for an initial term of up to twenty (20) years with options for possible extensions.

AH anticipates notifying Applicants within 30 days of AH's receipt of a completed application as to AH's administrative decision on the application. AH reserves the right to cancel or discontinue its application process for AH rental subsidy at any time throughout the duration of this NOFA if determined by AH, in its sole discretion, to be in the best interest of AH to do so.



Please Note: Timeline may vary if no construction or rehab is anticipated.

1.9 NOFA Schedule of Events

The following Schedule of Events represents AH's estimate of the timetable that will be followed in connection with this NOFA:

| Steps | TIMEFRAME |
|---|---|
| NOFA Posted on AH's website | November 1, 2023 |
| Submission Period for Application | Applications shall be submitted at any time via electronic submission. |
| Rolling Evaluation of Applications Submitted and Recommendation of Applications for Board Approval | The Evaluation Committee will review all applications as received and recommend applications to the Board for approval. |
| Board Approval and Notification to Applicant | Applications must receive an acceptable evaluation from an Atlanta Housing Evaluation Committee in order to be submitted to AH's Board of Commissioners for approval granting AH authorization to issue a Commitment Letter and execute all required HUD documents. The Applicant will be notified of the Board's decision. |
| Issuance of Commitment Letter and HUD Approval | If the AH Board of Commissioners authorizes the award, AH will issue a Commitment Letter and submit a request to HUD for NARRs approval. |

PART 2 – DEFINITIONS

Actual Date of Full Availability (“DOFA”) - DOFA occurs when at least 95% of the units in a development are ready to be occupied (i.e., have certificates of occupancy). The DOFA is especially important for management of a mixed-finance development because it starts the development’s initial operating period.

Annual Contributions Contract (“ACC”) is a written contract between HUD and a PHA. Under the ACC, HUD agrees to make payments to the PHA, over a specified term, for housing assistance payments to owners and for the PHA administrative fee. The ACC specifies the maximum payment over the ACC term. This document is unique to public housing and will be terminated at the time of the RAD conversion. As a result, these documents are expected to be effective for only a short time.

AH Enhanced Inspection Standards are the standards that AH will utilize, from time to time, in determining the suitability (or continued suitability) of the Owner’s units for occupancy by eligible residents.

Commitment to Enter into a Housing Assistance Payment (“CHAP”) is HUD’s initial approval of a Public Housing Agency’s (PHA) RAD application and RAD award.

Declaration of Restrictive Covenants (“DORC”) is a document between the United States Department of Housing and Urban Development and a Public Housing Agency that ensures long-term affordability at HUD funded developments. This document is unique to public housing and will be terminated at the time of the RAD conversion. As a result, these documents are expected to be effective for only a short time.

Housing Assistance Payment Contract (“HAP”) form HUD 52641 – Housing Assistance Payments Contract is used to provide Section 8 tenant-based assistance under the housing choice voucher program (voucher program) of the U.S. Department of Housing and Urban Development (HUD). The main regulation for this program is 24 Code of Federal Regulations Part 982. This form will be executed as part of the RAD conversion closing process.

Faircloth Amendment stipulates that the U.S. Department of Housing and Urban Development (“HUD”) cannot fund the construction or operation of new public housing units with Capital or Operating Funds if the construction of those units would result in a net increase in the number of units the Public Housing Agency (PHA) owned, assisted or operated as of October 1, 1999. This requirement is referred to as the “Faircloth Limit.”

Faircloth-to-RAD Conversion Strategy is an innovative financing path developed by HUD for PHAs to leverage their existing public housing “Faircloth Authority” to create new rent-assisted housing through the RAD Program.

Mixed-Finance Annual Contributions Contract (“ACC”) Amendment is a contract between the U.S. Department of Housing and Urban Development (“HUD”) and a Public Housing Agency that governs the public housing units and related appurtenances.

Noticed of Anticipated RAD Rents (“NARR”) is the Public Housing Agency’s request expressing interest in developing and converting units from its available Faircloth Authority to a specified rent level. The request is directed to HUD’s Office of Recapitalization (“Recap”).

New Construction shall mean developments that have not received a Certificate of Occupancy as of the proposal selection date.

Operating Cost Adjustment Factor (“OCAF”) rent increases are based on the Operating Cost Adjustment Factors released by U.S. Department of Housing and Urban Development (“HUD”) annually in the Federal Register. Guidance for OCAF Adjustment requests can be found in the Section 8 Renewal Policy.

RAD Conversion Commitment (“RCC”) is issued by U.S. Department of Housing and Urban Development (“HUD”) and authorizes the project to proceed with a financial closing and RAD conversion.

RAD Conversion Conditional Approval (“RCCA”) is issued by U.S. Department of Housing and Urban Development (“HUD”) and authorizes the project to proceed to a construction closing under the standard Mixed-Finance process.

RAD Use Agreement is a document signed by the owner, housing authority and HUD specifying the affordability and use restrictions on the Covered Project, which will be coterminous with the HAP Contract and must be recorded in a superior position to any new or existing financing or other encumbrances on the Covered Project.

Rental Assistance Demonstration (“RAD”) Program allows public housing agencies to leverage public and private debt and equity in order to reinvest in the public housing stock through conversion of units from their original sources of U.S. Department of Housing and Urban Development (“HUD”) financing to project-based Section 8 contracts.

Regulatory and Operating Agreement (“R&O”) is a contract between Atlanta Housing and property owner regarding the provision of operating subsidy and the operation of the public housing units in accordance with all applicable public housing requirements. This document is unique to public housing and will be terminated at the time of the RAD conversion. As a result, these documents are expected to be effective for only a short time.

Section 8, also known as the Housing Choice Voucher Program, is the federal government's major program for assisting very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market. Since housing assistance is provided on behalf of the family or individual, participants are able to find their own housing, including single-family homes, townhouses and apartments.

Section 9, also known as the Public Housing Program, of the U.S. Housing Act of 1937 provides operating subsidies to public housing authorities (“PHAs”) to assist in funding the operating and maintenance expenses of their own dwellings through the Public Housing Operating Fund. The subsidies are required to help maintain services and provide minimum operating reserves.

UFAS Accessible Unit refers to a Unit that complies with the Uniform Federal Accessibility Standards. Five percent (5%) and two (2%) of the total number of AH-assisted units in a covered project must be available for housing participants who require the accessibility features of such a unit

Work Program Requirement is a requirement that a specified segment of its public housing and/or Housing Choice Voucher residents work as a condition of tenancy, subject to all applicable fair housing and civil rights requirements and the mandatory admission and prohibition requirements imposed by sections 576-578 of the Quality Housing and Work Responsibility Act of 1998 and Section 428 of P.L. 105-276.

PART 3 - FAIRCLOTH TO RAD PROGRAM REQUIREMENTS

3.1. Tenant Eligibility Requirements

In order to be eligible for this housing program, a resident must meet eligibility criteria requirements established by AH including HUD applicable requirements as specified under AH's Amended and Restated Statement of Corporate Policies, the Property Management/Developers (PMDs) Management Plan, and the following qualification and selection criteria identified below:

1. Meet AH's definition of a Family;
2. Family's Annual income is between 0% to 80% of the area median income ("AMI");
3. Meet the age and/or disability requirements set for in the eligibility criteria for the proposed property;
4. At least one household member must be a United States citizen or eligible immigrant regardless of age;
5. Pass a criminal history screening (age 18 years and older);
6. Not receive housing subsidies from another HUD-funded program while residing at an AH-owned residential community;
7. Meet the requirements in regards to debt owed and termination of formerly subsidized households; and
8. Meet the Work Program requirements.

3.2. Site-Based Wait List Administration

The Owner/Manager must establish a site-based wait list based on the acceptance of applications/pre-applications during normal business hours via date and time stamp. When accepting applicants for the waiting list, Property Managers may choose to use a "full" application form, requiring all the detailed information needed to make a determination of eligibility, or a shorter pre-application form. The pre-application form provides the minimum information required to determine if the applicant should be placed on the waiting list. The Owner/Manager must select applicants from the waiting list based on the following:

- The original date and time the applicant was placed on the waiting list and
- The availability of the appropriate unit size based on the occupancy standards and/or other circumstances.

All opening and closing of the site-based waiting list must be approved by AH prior to being advertised.

3.3. Non-Discrimination and Other Federal Requirements

The Applicant/Developer will comply with the following requirements, as applicable:

- A. The Fair Housing Act, 42 U.S.C. §3601-19**, and regulations issued thereunder, 24 CFR Part 100; Executive Order 11063 (Equal Opportunity in Housing) and regulations issued thereunder, 24 CFR Part 107; and the fair housing poster regulations, 24 CFR Part 110, and advertising guidelines, 24 CFR Part 109;
- B. Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d**, and regulations issued thereunder relating to non-discrimination in housing, 24 CFR Part 1;

- C. **Age Discrimination Act of 1975, 42 U.S.C. §§6101-07**, and regulations issued thereunder, 24 CFR Part 146; and
- D. **Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794**, and regulations issued thereunder, 24 CFR Part 8, including the Uniform Federal Accessibility Standards, 24 CFR Part 40, App. A; Title II of the Americans with Disabilities Act, 42 U.S.C. §12101 et seq., and regulations issued thereunder, 28 CFR Parts 35 and 36; the Architectural Barriers Act of 1968, 42 U.S.C. §§4151-4157; and Section 109 of the Housing Community Development Act of 1974 (Section 109), 42 U.S.C. §5301 et seq., and regulations issued thereunder, 24 CFR Parts 570.601 and 570.602.
- E. **RAD Fair Housing, Civil Rights, and relocation Notice** - This Notice provides PHAs and Project Owners with guidance relating to planning and implementing public housing (First Component) RAD conversions in a manner consistent with existing fair housing and other civil rights requirements, including, but not limited to, those associated with the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Executive Order 11063, Section 504 of the Rehabilitation Act of 1973, Titles II and III of the Americans with Disabilities Act, the Architectural Barriers Act of 1968, and their implementing regulations.
- F. **The Davis-Bacon Act** requires the payment of prevailing wage rates (as determined by the Department of Labor) to laborers and mechanics on federally assisted construction projects in excess of \$2,000. In addition, pursuant to 24 CFR Part 983.154, the Applicant's or Developer's contractors and subcontractors must pay Davis-Bacon wages to laborers and mechanics employed in the development or rehabilitation of the housing with nine or more RAD units. (**Note: Davis-Bacon compliance will not apply to contracts with 8 or fewer RAD units**).

The following relates to the wage determinations for rehabilitation work that is necessary to bring the property in compliance with Atlanta Housing physical and accessibility standards:

1. **Residential - Less than four (4) stories**
Pursuant to Title 29 CFR Parts 1.5 and 1.6(b), a Residential wage determination is issued for this construction project. Residential wages apply to new and substantial rehabilitation of single-family homes and apartment buildings of **less than four (4)** stories. Accordingly, the wages of laborers and mechanics will be monitored for compliance with labor standards.
2. **Building - More than four (4) stories**
Pursuant to Title 29 CFR Parts 1.5 and 1.6(b), a Building wage determination is issued for this construction project. Building wages apply to new and substantial rehabilitation of structures of **more than four (4)** stories, typically housing, warehouses, machinery and equipment storages facilities etc. Accordingly, the wages of laborers and mechanics will be monitored for compliance with labor standards.

As referenced above, the construction type for this NOFA is either **Residential** or **Building**. No other construction categories apply. Davis-Bacon wage decisions may be accessed via the following link: <https://www.dca.ga.gov/node/8247>

G. Compliance

Atlanta Housing's mission continues to be to increase the availability of affordable housing by constructing new units and preserving existing units through rehabilitation and modernization; using housing as a platform to improve quality of life; and by acting as good stewards of resources through

collaboration and inclusion opportunities and leveraging resources. Who AH does business with to build and preserve affordable housing in and around the City of Atlanta, is as important as what AH builds or preserves.

1. *Compliance with AH Small Business Initiative:* Consistent with HUD requirements, AH is committed to providing contracting and subcontracting opportunities to Small, Disadvantaged, Minority-owned, Women-owned (“M/WBE”), and Section 3 Business Concerns. AH will evaluate for consistency with these requirements the Development and Subcontractor Utilization Plan required from all project proposals. The Utilization Plan will outline any joint ventures, teaming arrangements, and/or subcontracting opportunities.
2. *Compliance with HUD Section 3 Requirements:* AH is committed to providing economic opportunity to low- and very low-income persons living in the City of Atlanta. Consistent with these requirements, AH will evaluate whether a proposed project meets HUD’s Section 3 Benchmark hiring goals. AH targeted workers should represent at least 5% of the total labor hours worked on this project and Atlanta residents should represent 25% of the total labor hours worked on this project. These Benchmarks are to be met on the construction and development phases, as well as for management and maintenance of the completed facilities.
3. *Compliance with All Applicable Regulations:* AH is subject to federal, state, and local laws and regulations through its various funding streams with HUD, among others. AHA will monitor all real estate activities for compliance with all applicable laws, rules and regulations. Additionally, AH will assess how entering into new project arrangements or accessing new sources of funding will impact the laws, rules, and regulations applicable to AH.
4. *Alignment with Local Development Requirements and Plans:* To minimize the risk of challenges and obstacles related to local development requirements and plans, new development will be assessed to determine the degree to which the project complies with existing or proposed zoning and aligns with adopted area plans.
5. *Residents/Community:* The development plan should demonstrate a long-term commitment to community engagement and to working in partnership with stakeholders, residents and local businesses. Development must include a plan for programs and partnerships to support the community.

H. Section B6: Supplier Diversity and Inclusion Plan

This section of the response requires all respondents to submit a written description of their M/WBE Utilization efforts and Section 3 Hiring. This information will be reviewed and evaluated based on HUD and AH policies. Atlanta Housing anticipates that while no Respondent may be able to complete a Utilization Form until a Notice-of-Award is received and the Awardee’s separate bidding has been completed, all Respondents shall outline who they expect to contract for M/WBE and Section 3 sub-contractor(s) participation. All Respondents have previously acknowledged a 35% M/WBE and Section 3 Business goal and the separate federal requirements for Section 3 Workers and Targeted Section 3 Workers. [See G(2). *Compliance with HUD Section 3 Requirements*]. **Post Selection – Only The Awardee from this solicitation shall** provide a completed SD&I Utilization plan that includes a Completed Subcontractor Utilization Form for M/WBE & Section 3 Business utilization and a Completed Section 3 Hiring Plan. Commitments are expected to be detailed, substantially or in whole within forty-five (45) days of the Notice-of-Award. If a Respondent requires additional assistance, the Post Section Awardee will communicate in writing to AH SD&I and obtain approval to tender the forms at a later date.

I. Minority Utilization

To meet AH compliance requirements the Respondent should provide a detailed narrative backed up by specific statistics of the Respondent's previous expertise and success in utilizing Section 3 residents/businesses and contracting with Small, Disadvantaged, Minority-owned, Women-owned, and Section 3 Business Concerns. The Respondent should also describe the extent to which this development and its management will provide opportunities for local businesses to provide services and to operate within the new development. **(See Exhibit C – Opportunity Inclusion Policy for more information)**

J. Section 3 Hiring

AH recommends providing a measurable Section 3 Hiring Plan throughout all phases of the project. The Hiring Plan should include a brief description of the training and/or job opportunities for Section 3 participants, the number of participants expected to be hired, the tasks to be performed by the participants and the number of hours to be worked by participants. Some examples of opportunities include catering, payroll, IT maintenance, research, accounting, landscaping, painting, carpentry, and other construction trades, to name a few. The Hiring Plan should detail the outreach efforts and affirmative steps that will be utilized on all phases of the project by the Developer as well as general contractor(s) and subcontractors performing work thereon. **(See Exhibit D – HUD's Section 3 Regulations at 24 CFR 75.)**

PART 4 – AGREEMENT TERMS

4.1. Letter of Commitment and Mixed Finance Transaction

The NOFA may result in the selection of one or more proposals for commitment of AH's support to provide FTR to eligible units in a development, subject to the requirements of the NOFA.

4.2 Transaction Closing

Completion of the transaction will require submission of a Mixed Finance Development Proposal to the HUD Office of Public Housing Investments, and if approved, negotiation of the terms and conditions of a Regulatory and Operator Agreement and a Declaration of Trust/Restrictive Covenants between the parties and such other documents as necessary and/or required by AH and/or HUD in order to close the transaction ("Mixed Finance Transaction"). The Declaration of Trust/Restrictive Covenants and the Regulatory and Operating Agreement must be recorded against the development property. The Regulatory and Operator Agreement and a Declaration of Trust/Restrictive Covenants will terminate at the time of the RAD conversion. Any lenders will need to subordinate their loans to the RAD Use Agreement.

4.3. Uniform Federal Accessibility Standards (UFAS) Compliance

- A. The U.S. Access Board is a federal agency that promotes equality for people with disabilities via the development of accessibility guidelines and standards.
- B. UFAS Standards present uniform standards for the design, construction and alteration of buildings so that physically handicapped persons will have ready access to and use of them in accordance with federal law. UFAS standards are the agreement on standards previously used by four agencies (i.e., General Services Administration, the Department of Housing and Urban Development, Department of Defense and the United States Postal Service)
- C. Applicants should contract with a consultant themselves for a UFAS inspection and tender the results to Atlanta Housing. The property must be certified by a qualified professional consultant prior to AH executing an R&O agreement and RAD Use Agreement. AH may consider arranging for and pay for inspections if it is in the best interests of AH.
- D. Units tendered for AH subsidy must be certified as UFAS compliant.
- E. A link to current UFAS requirements can be found here: <https://www.accessboard.gov/guidelines-and-standards/buildings-and-sites/about-the-aba-standards/background/ufas?highlight=WyJ1ZmFzIl0>

4.4. Environmental Review Requirements

- A. Environmental review requirements, as found in 24 CFR parts 50 and 58, and the related federal laws and authorities, apply to all HUD-funded activities, including the Section 9 Public Housing Program (24 CFR Part 983) for existing, new construction and substantial rehabilitation projects receiving Public Housing subsidy. As a result, all awards of Public Housing subsidy are conditional on the completion of an environmental review in accordance with 24 CFR 983.58 prior to the execution of a Regulatory and Operating Agreement ("R&O") and RAD Use

Agreement.

B. AH will not enter into a R&O Agreement with an Awardee until one of the following occurs:

- The responsible entity has completed the environmental review procedures required by 24 CFR part 58 and HUD has approved the environmental certification and request for release of funds; or
- The responsible entity has determined that the project to be assisted is exempt under 24 CFR 58.34 or is categorically excluded and not subject to compliance with environmental laws under 24 CFR 58.35(b); or
- HUD has performed an environmental review under 24 CFR part 50 and has notified the PHA in writing of environmental approval of the site.

Because of this requirement, Awardees may not take any action prohibited under 24 CFR 983.58(d) (i.e., acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct real property or commit or expend program or local funds for PBV activities) until the environmental process is completed.

In addition, until the completion of the environmental review process, additional funds (federal, private, or other) cannot be committed or expended and no work (including property acquisition) can be undertaken on the project until the responsible entity completes the environmental review and has received a Release of Federal Funds (“ROFF”) from HUD. If an awardee decides to start construction or take any of these choice-limiting actions prior to the completion of the environmental review process, there is a risk of losing an award as AH cannot provide federal funds to a project until the environmental review has been completed and approved by HUD. Lastly, if there are any environmental findings, awardees are required to carry out mitigating measures required by the responsible entity in order to enter into an R&O Agreement.

PART 5 – PROPOSAL EVALUATION

5.1. Evaluation Factors

Applicants must provide all information outlined in the Evaluation Factors to be considered responsive. Applications will be evaluated based on the feasibility of the Applicant’s responses to the Evaluation Factors as well as the costs and proposed management structures for offering eligible housing and administration of Public Housing units.

Applicants must respond thoroughly to each of the following Evaluation Factors:

APPLICANT INFORMATION

List and briefly describe 3 projects within the last 10 years that exhibit the Applicant’s experience in multi-family real estate, focusing on the experience most relevant to this NOFA. For each project, provide the following information:

- a. Project name and location
- b. Brief description of the project (indicate if new construction or rehabilitation and indicate financing sources and amounts)
- c. Owner entity or developer team members
- d. Brief description of community:

- i. Population type and income levels served;
- ii. Type of local/state/federal funding or rental assistance (if applicable);
- iii. Physical description (e.g., number of units, number of buildings/stories, square footage, site acreage, etc.); and

Also provide the following:

- a. Identify the Applicant's ownership status as a for-profit or nonprofit Owner. Provide a complete disclosure of all entities and individuals comprising the Owner.
- b. Provide complete organizational charts that clearly show all principals of the Owner.
- c. Provide a summary list of the Owner's current portfolio of properties.
- d. Indicate whether the Owner has ever experienced a foreclosure or bankruptcy.
- e. If the Owner or Management Team has previous experience with the low-income housing tax credit program, or HUD or other federal or state programs, describe any unresolved audit findings (e.g., findings by DCA, HUD or other program sponsors)

PROPOSED RENTAL OPPORTUNITY

For the proposed project, provide the following information:

- a. Project name and location
- b. Brief description of the project (indicate if new construction or rehabilitation and indicate financing sources and amounts)
- c. Owner entity or developer team members (Must meet Ownership and Control requirements under Section 1.4.A.11 of the RAD Notice
https://www.hud.gov/sites/dfiles/Housing/documents/RAD_Noteice_Rev4_as_amended_by_Supplemental_4B.pdf)
- d. Brief description of community:
 - i. Population type and income levels served;
 - ii. Describe the services to be provided to the residents and funding source for the services (if applicable)
 - iii. Census Tract of proposed project
 - iv. Type of local/state/federal funding or rental assistance (if applicable);
 - v. Physical description (number of units, number of buildings/stories, square footage, site acreage, etc.)
 - vi. Green and/or sustainable elements
 - vii. For mixed-use developments, describe plans for the commercial portion of the development
 - viii. Neighborhood amenities, including educational, commercial, health, recreational/social or supportive service provider components must be graphically identified by a color map submittal with the proposed development shown at the center of the 1-mile radius ring
- e. A detailed market study providing justification of need in the specified community area for the identified housing type being proposed.
- f. Documentation of support from at least one (1) of the following sources:
 - i. A City Council Resolution of Support;
 - ii. A letter from the corresponding Neighborhood Planning Unit ("NPU") signed by the Chair or other authorized representative; or

- iii. A letter from the corresponding neighborhood association, signed by an authorized staff member

OWNERSHIP OF RENTAL OPPORTUNITY

Applicant must provide the following:

- a. Evidence of site control, including option agreements, sales contracts or proof of current ownership
 - i. Contracts must be executed prior to execution of the FTR HAP Contract, include the legal description of the property and provide legal control of the property to the proposed general partner or limited partnership.
 - ii. Site control must be in place through the term of the FTR HAP Contract.
- b. Documentation of zoning status
 - i. Applicant must establish that the property is appropriately zoned, or in the process of being rezoned, for the intended use (include expected timing of rezoning completion).
- c. Evidence of utilities being available to the site

SITE MANAGEMENT PLAN

Applicant must submit a proposed management plan that will be evaluated on the basis of its completeness, sound policies and procedures, and demonstration that the units will be managed in accordance with professional standards and approaches.

ENVIRONMENTAL REVIEW

Applicant must submit the following for the proposed project for completion of a National Environmental Policy Act ("NEPA") Environmental Review:

- a. A completed Phase I Environmental Site Assessment
- b. Completion of the Environmental Questionnaire (Exhibit B)

FINANCIAL FEASIBILITY

Applicant must provide the following:

- a. A 20-year *pro forma* illustrating proposed rents for FTR units
 - i. The rents must not exceed the current 60% AMI rent levels per HUD
 - ii. Proof of funding sources (e.g. letters of interest or commitments) for all proposed funding sources

REFERENCES

Applicants must provide the name and contact information from at least 3 professional references.

Proposals are evaluated based on the following Evaluation Factors and generally must meet a minimum threshold score of 60 points in order to be considered for award:

| | Factors for Evaluation | Maximum Points |
|---|--|-----------------------|
| 1 | Applicant Information | 10 |
| 2 | Proposed Rental Opportunity | 25 |
| 3 | Ownership of Rental Opportunity | 15 |
| 4 | Site Management Plan | 5 |
| 5 | Environmental Review | 15 |
| 6 | Financial Feasibility | 25 |
| 7 | References | 5 |
| | | 100 |

The establishment, application and interpretation of the above Evaluation Factors shall be solely within the discretion of AH.

Basis for Award

Atlanta Housing awards will be based on those applications that represent a best overall value to Atlanta Housing, which shall be a combination of technical score, financial feasibility, intended quality of rehabilitated or developed new units and location, and the additional applicable factors . The non-qualitative evaluation of best value factors by Atlanta Housing, shall be at AH's sole discretion.

5.2. Evaluation and Award Process

- A. An Evaluation Committee shall be established to evaluate applications based on the Evaluation Factors set forth above. Proposals will be evaluated on an individual basis. A technical advisor with the required expertise may provide information and advise the Evaluation Committee on technical matters.
- B. The evaluated or relative weight of the Evaluation Factors will be recorded for each Application. The Factors for Evaluation will take into account important program and property characteristics, as well as the experience level and qualifications of the combined Applicant/Management Team. The selection or non-selection of an Application based on the Evaluation Factors, shall be within AH's sole discretion. The Evaluation Committee reserves the right to visit proposed sites, verify information submitted in the Faircloth Subsidy Program Application, contact Applicants to clarify information provided, and contact references, and conduct third-party interviews. AH may conduct formal interviews of certain Applicants who are determined to be qualified based upon the initial evaluation of the Application.
- C. Applicants will be advised, in writing, of AH's decisions on applications.
- D. AH reserves the right at any time during the evaluation process to reconsider any Application submitted and to meet with any Applicant to gather additional information.
- E. AH reserves the right to reject an award to Applicants during contract negotiations if: (1) Applicant and AH cannot agree to mutual terms for the award, or (2) Applicant causes delay that, in AH's discretion, causes a hardship or inconvenience to Atlanta Housing, (3) or for convenience.

Generally, an application receiving an acceptable evaluation and recommendation from the Evaluation Committee, and an acceptance of the recommendation by the President and CEO, or his designee, will be submitted to AH's Board of Commissioners for approval, subject to the availability of funding. If approved by the Board of Commissioner, AH will send the Applicant a Commitment Letter. Applicant must work with AH

to submit the necessary information to HUD in order to complete the FTR Conversion process illustrated in Exhibit A of the HUD Faircloth-to-RAD Guide. If the Applicant fails to execute the closing within the specified timeframe, the Commitment Letter will expire without further notice from AH unless the Applicant requests an extension in writing. AH, in its sole discretion, may or may not grant such extension based on the reasons supporting the request.

Attachments:

Exhibit A - HUD Faircloth to RAD Resource Guide

Exhibit B - Environmental Questionnaire

Exhibit C - Opportunity Inclusion Policy for more information

Exhibit D - HUD's Section 3 Regulations at 24 CFR 75 (Pages 87 - 131 of this NOFA)



U.S Department of Housing and Urban Development

Office of Housing and

Office of Public and Indian Housing

Faircloth-to-RAD Conversions



January 11, 2022

Introduction

The severe shortage of available affordable housing leaves far too many of the nation's households paying more than 30% of their income to have a place to call home. Every year, we lose more affordable rental units to demolition, deterioration of aging properties, expiring affordability restrictions, and increased prices in local markets. In the face of this crisis, HUD is deploying all tools available to provide affordable homes to those in need by improving the quality of existing affordable housing and adding new affordable homes.

To further these goals, HUD has developed an innovative, new path for Public Housing Authorities (PHAs) to leverage their existing public housing "Faircloth Authority" to create new federally assisted housing through the Rental Assistance Demonstration (RAD). "Faircloth-to-RAD" conversions will help PHAs and their partners more readily access financing for the development of new deeply affordable units.

Many PHAs operate fewer rent-assisted units than their "Faircloth" authority limits them to. Faircloth authority is a cap that Congress established in 1998 on the number of public housing units the Federal government would support. There is existing Federal authority to provide deep rental assistance for nearly 220,000 units, provided the PHAs can finance the acquisition or initial construction. The Faircloth-to-RAD strategy targets this financing need.

In a Faircloth-to-RAD transaction, PHAs will develop public housing units using HUD's public housing mixed-finance program with pre-approval to convert the property to a long-term Section 8 contract following acquisition or rehabilitation/construction. With early-stage RAD conversion approvals, lenders and investors will have the revenue certainty through familiar Section 8 contracts to underwrite these projects.

HUD has streamlined and merged the mixed-finance development and RAD conversion processes to eliminate duplicative steps and to maximize predictability. In this guide, PHAs will find the following information and resources to consider the Faircloth-to-RAD process:

- The number of "Faircloth" units available to each PHA;
- Guidance on how to implement Faircloth-to-RAD conversions, including the sequence of RAD and mixed-finance development processes;
- A description of the specific items HUD's Office of Recapitalization (Recap) will need to review before construction/acquisition to ensure the project will satisfy RAD requirements when construction/acquisition is complete;
- Links to more detailed information about both the mixed-finance and RAD processes;
- The template that HUD will use to provide the anticipated RAD rents for new projects; and
- The template that HUD will use to provide a pre-construction conditional approval of the RAD conversion simultaneous with the mixed-finance development approval.

With these materials, any PHA with available authority under Faircloth can devise plans to create new deeply affordable housing.

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Guidance on Faircloth-to-RAD Conversions

Introduction

This guidance document is written for public housing authorities (PHAs) who have expressed interest in the following:

- Using the Office of Public Housing Investments (OPHI) Mixed-Finance¹ program to add new public housing units from their available [Faircloth Authority](#); **and**
- Converting the assistance from public housing to Section 8 through the Rental Assistance Demonstration (RAD) program once the new units have been entered into the PIH Information Center (PIC).

This conversion type is referred to as a “Faircloth-to-RAD” conversion. Faircloth-to-RAD conversions are specific to Mixed-Finance transactions where PHAs develop or modernize public housing units under 24 CFR § 905.604 **and the units are owned in whole or in part by an entity other than the PHA**. If an acquisition/rehab transaction is done in partnership with a PHA instrumentality or PHA affiliate, the proposed ownership structure automatically triggers the Mixed-Finance process. If it is anticipated the project will convert under RAD after the acquisition/rehab, it would fall under the protocols outlined in this guide. The use of Low-Income Housing Tax Credits (LIHTC) is not a requirement of the Faircloth to RAD process. In other words, when using their Faircloth authority, a PHA can create a single asset entity for the purpose creating a mixed finance transaction, and can then apply for a Faircloth to RAD conversion under this guide.

Throughout this guide, HUD uses the phrase “construction” to refer to new construction or acquisition transactions with rehabilitation work where the units are developed under the Mixed-Finance program. By definition, a Mixed-Finance development could also refer to an acquisition without rehabilitation so long as the project meets the Mixed-Finance program criteria as referenced above.

While Faircloth-to-RAD conversions are not limited to new construction projects, this guide is intended to provide detailed instructions for projects undergoing a Faircloth-to-RAD conversion where there is significant rehabilitation or new constructions. In such cases, there are three phases in the process of developing and converting these units: (1) Pre-Development; (2) Acquisition/Construction; and (3) Conversion to Permanent Financing.

Exhibit A presents the key steps in the Faircloth-to-RAD conversion process. **The annotations, depicted by a numbered box to the left of this guide, reference the key steps depicted in Exhibit A of this guide.**

HUD is considering developing additional guidance on how to approach Faircloth-to-RAD conversions which use other methods of development, such as conventional development.

^{1,2} Please refer to https://www.hud.gov/program_offices/public_indian_housing/programs/ph/hope6/mfph for information on the Mixed-Finance program and to access MFDP template.

Process Description – Pre-Development Period

1

The Faircloth-to-RAD conversion process begins with the PHA's request for the Notice of Anticipated RAD Rents (NARR), thereby communicating its interest in developing and converting units from its available Faircloth authority to Recap. This inquiry is made through the RAD Resource Desk (www.radresource.net) by selecting the "Faircloth Conversion" option and providing HUD with specific information, requested in the RAD Resource Desk, needed to calculate the estimated RAD rents for the project at the time of conversion.

Please note that if the specific project characteristics used to calculate the RAD rents change before the PHA submits its Mixed-Finance Development Proposal (MFDP)², the PHA will need to provide updated information for HUD to calculate revised rents.

In addition to requesting the NARR, the PHA must reserve conversion authority under RAD so that when a project is issued a Date of Full Availability (DOFA) by the PIH Field Office³, the PHA can be assured that there is availability under the statutory cap of public housing units that can be converted under RAD (currently set at 455,000 units). Conversion authority can be reserved for the units being developed through one of the following three options:

- **Option 1:** If the PHA has as an existing RAD Portfolio Award, when completing the Faircloth Conversion application, the PHA should select "Add to Existing Portfolio Award" under the Reserve Units heading to cover the RAD conversion of the planned project(s) Units.
- **Option 2:** If the PHA does not have a RAD Portfolio Award, then a PHA can secure conversion authority by submitting a RAD Portfolio Application⁴, as outlined in Section 1.9.C of the RAD Notice.
- **Option 3:** A PHA that does not meet the criteria in Section 1.9.C for a Portfolio Award ("PHA A") because it has no other public housing properties may partner with another PHA ("PHA B") who has an existing Portfolio Award. PHA A would select "Partner with Another PHA" under the Reserve Units heading in the Faircloth Conversion application. The PHA will then be able to select the partnering PHA from a drop down menu to update PHA B's Portfolio Award to include the PHA A's Project Units, thereby reserving authority under the RAD unit cap for PHA A. PHA B should note for HUD that a specified number of units are reserved on behalf of PHA A. The units will be removed from PHA B's Portfolio Award when HUD issues a CHAP to PHA A.

2

Once HUD has calculated the RAD rents and conversion authority is secured, HUD will issue a NARR, which contains the estimated RAD rents. The RAD rents stated in the NARR can be used by the PHA to underwrite the project and should be reflected in the PHA's MFDP that is submitted to OPHI. A PHA should be in receipt of the NARR prior to submission of the MFDP.

³ The DOFA is the last day of the month in which substantially all (95% or more) of the units in a public housing project are available for occupancy. 24 CFR 905.108.. The DOFA is important as it represents the date the PHA can enter the new units in PIC as Public Housing units and they become eligible to convert under RAD.

⁴ This application can be accessed on the Resource Desk by selecting the "Apply" icon and then clicking on the "RAD Portfolio Application" hyperlink which will download an Excel spreadsheet that must be completed by the PHA.

Please note that, as with all RAD conversions, a PHA has certain flexibilities under Section 1.6.B.5 and 1.7.A.5 to make modifications to the rents, including through rent bundling and using Moving to Work (MTW) flexibility. Any rent modifications the PHA intends to make can be applied to the rents reflected in the NARR. Typically, the NARR will not be amended to reflect any such rent modifications but rather, they will be memorialized when HUD issues the RCCA (step 6 below).

3

When the PHA is close to submitting the MFDP, it should request a preliminary conversion call with both the Office of Urban Revitalization and the Office of Recapitalization. The preliminary conversion call will discuss the following agenda items:

- The Faircloth-to-RAD conversion process
- The construction delivery and occupancy plans, specifically whether all units will be completed at once or whether units will be delivered for occupancy over time (e.g., on a building-by-building basis)
- Permanent financing terms and the timing of the RAD conversion relative to construction completion and the take-out of the construction loan by permanent financing
- Funding during the year of conversion (conversion occurs after the DOFA)

4

To expedite processing, HUD has established streamlined requirements for Faircloth-to-RAD conversions.

The PHA will submit the Mixed-Finance Development Proposal and include a few additional pieces of information to support the Faircloth-to-RAD underwriting. See Section 3 of this guide, titled 'MFDP Proposal when the Contemplating a RAD Conversion.' Specifically, the MFDP proposal must include the following items:

- 1) A Capital Needs Assessment (CNA) to support the Initial Deposit to Replacement Reserve (IDRR)/Annual Deposit to Replacement Reserve (ADRR). If no CNA is submitted and the project entails new construction or the use of 9% LIHTC, the ADRR must be at least \$450 per unit per annum (PUPA).
- 2) A legal opinion based on the state and local law where the project is located that supports a continuation of the Payment In Lieu of Taxes (PILOT) agreement after conversion to Section 8 under RAD.
- 3) An Environmental Review that includes the RAD conversion in the description of actions being taken.
- 4) The PHA's Annual Plan/MTW Plan or Significant Amendment to the Annual Plan/MTW Plan must include a description of the RAD conversion. Similarly, if the PHA is a MTW agency, the PHA must provide a copy of the RAD amendment to Attachment A of the MTW Agreement.

Parallel to submission of the MFDP, a PHA will upload to the Resource Desk only the RAD Financing Plan documents that are not covered within the MFDP, specifically the following items:

- 1) The Conversion Overview, including a description of the proposed RAD ownership structure
- 2) Selection of Program Platform: Project Based Vouchers or Project Based Rental Assistance
- 3) Certification of Board Approval of the RAD Conversion
- 4) Approved Significant Amendment to PHA Plan and, if applicable, the Approval of the MTW Agreement

5) Any requests for supplementing RAD rents with MTW funds, if applicable

Since OPHI is underwriting the project as public housing and because the conversion of assistance under RAD will not occur until construction completion, Recap will underwrite the RAD conversion as a no-debt conversion without any construction. Therefore, all development activity should be reflected in the MFDP's discussion of sources and uses of funds, even if the expenditures may occur after the date of the RAD conversion and even if the expenditure is associated with the RAD conversion, such as legal fees for closing.

The RAD Transaction Log is not required at this time because Recap expects that all costs known at this stage of the process will be reflected in the Mixed Finance Development Proposal and the RAD "Sources and Uses" of funds will likely involve very minimal transaction costs.

5 If OPHI approves the PHA's MFDP, Recap will, in conjunction with the Mixed-Finance Approval Letter, issue a RAD Conversion Conditional Approval (RCCA), along with a draft RAD Conversion Commitment (RCC). The draft RCC will stipulate the conditions upon which the PHA is receiving conditional approval and outline the steps that need to be completed for the PHA to effectively convert through RAD.

6 Upon receipt of OPHI's Mixed-Finance Approval, the PHA will proceed to closing the transaction (construction financing closing) under the standard Mixed-Finance development processes. No additional RAD steps, or Recap approvals, are required between issuance of the RCCA and the Mixed-Finance closing.

The Mixed-Finance closing process includes, but is not limited, to the preparation and approval of the following "evidentiary" documents:

- Mixed-Finance Amendment to the Annual Contributions Contract (ACC) ,
- Declaration of Restrictive Covenants (DORC), and
- Regulatory & Operating Agreement (R&O).

During the Mixed-Finance closing process, the PHA also submits to HUD, as applicable, the first mortgage and subordinate mortgage loan documents, the ownership entity partnership agreement/operating agreement, the ground lease, construction documents, the management agreement, the management plan, and all other documents for the real estate development transaction.

The bulleted documents listed above are unique to public housing and will be terminated at the time of the RAD conversion (see templates referenced in Section 3 of this document). As a result, these documents are expected to be effective for only a short time. Therefore, the PHA should draft and negotiate these documents with that limited lifespan in mind. OPHI and the PHA should also inform the HUD Office of General Counsel team that the transaction will be converting to RAD once the units are entered into PIC so that the legal documents prepared at the time of the Mixed-Finance closing are reviewed with RAD in mind.

Process Description – Construction Period

9 Once the Mixed-Finance transaction is closed, the PHA can begin construction activity on the project. As the units near construction completion, the PHA should prepare to submit to PIH the documents that

onboard the units as public housing. The units must be developed, fit for occupancy, and included within the public housing program pursuant to the requirements of 24 C.F.R. Part 905 Subpart F. Once the PHA has obtained Certificates of Occupancy for 95% of the units, the PIH Field Office can enter the actual DOFA date and the PHA will enter the units into PIC, officially classifying the units as public housing.

8

The PHA is also responsible for notifying Recap when construction of the units is nearing completion. The timing of such notification is at the PHA's discretion, but at least 60 days before the projected DOFA is strongly encouraged to minimize the time that it will operate the units under public housing requirements. At this stage in the process, as described in the RCCA, the PHA must upload/update the following on the RAD Resource Desk:

- Construction Completion Update – contains the PHA's certification that the completed project is consistent with the terms specified in the RCCA. The PHA should include any work to be done after the date of the RAD conversion which was not reflected in the MFDP or subsequent OPHI approvals. The PHA should also inform Recap of any financing liens to be created post-RAD conversion so that they may be reviewed, approved, and identified as HUD-approved liens in the Additional Provisions exhibit of the RCC. PHAs may not place additional liens on a RAD converted property without HUD approval and this pre-approval will ensure a smooth closing of any post-RAD financing liens.
- Attachments to the Construction Completion Update – explains and documents material changes from the transaction structure as previously approved by Recap, if necessary.
- Resource Desk Transaction Log – The Transaction Log will be pre-populated to reflect \$0 Sources and \$0 Uses as all sources and uses will have been approved and reflected in the Mixed Finance Development Proposal. With the Construction Completion Update, the PHA will update the Transaction Log if there were any changes to the sources and uses that are not reflected in prior OPHI approvals and to reflect any transaction costs specifically related to the RAD conversion. The PHA must also enter pro forma data to confirm the viability of the project and finalize the rents. The pro forma entries should include items such as updated rents to reflect any Operating Cost Adjustment Factor (OCAF) adjustments or MTW rent flexibilities applied since the NARR, the ADRR, utility allowances, monthly debt service at the property, etc.

Once all applicable documents and updates identified above are complete and uploaded to the Resource Desk, Recap will review the submission to confirm that the transaction complies with RAD requirements. Recap will then assign a Closing Coordinator and HUD's Office of General Counsel will assign counsel to close the RAD conversion. The PHA may begin uploading the RAD closing documents to the RAD Resource Desk.

The list of necessary closing documents is available in the Document Library on the RAD Resource Desk. As noted above, many of these documents can be negotiated at the time of the Mixed Finance closing if the PHA chooses. Uploading documents at this time is strongly encouraged as it will allow Recap and HUD's Office of General Counsel staff, which work with both Recap and PIH, to begin reviewing the closing documents to prepare for RAD closing. This will minimize the length of time the project operates as Public Housing between construction completion and RAD closing when it converts to Section 8.

Process Description – Conversion to Permanent Financing Period

Once the PHA has notified Recap that construction is nearing completion and Recap has accepted the Construction Completion Update and other applicable documents, Recap will coordinate with PIH to monitor when the units are entered into PIC and established as public housing. Once the units are in PIC, Recap will issue the Commitment to Enter into a Housing Assistance Payments Contract (CHAP) and RCC simultaneously. The RAD conversion can then proceed to final RAD closing reviews.

RAD Closing

The RAD closing process for Faircloth-to-RAD conversions is consistent with all other RAD conversions. The closing process generally takes approximately 60 days, which begins when the PHA uploads a complete closing package to the Resource Desk. The PHA does not have to wait until the units are entered into PIC and the CHAP/RCC has been issued to upload the RAD closing documents in order to expedite the RAD closing process. The RAD closing occurs once HUD approves all closing documents. The PHA team should familiarize themselves, prior to CHAP/RCC issuance, with the following guidance documents available on the Resource Desk:

- [Overview of the RAD Closing Process for PHAs](#)
- RAD Closing Checklist & Overview – [PBRA⁵](#)/[PBV](#)

In addition to the standard closing documents, the following documents will be required for closing a Faircloth-to-RAD conversion. These templates are available on the Resource Desk:

- [Mixed Finance – Termination of Mixed Finance Amendment to the ACC](#)
- [Mixed Finance – Release from Declaration of Restrictive Covenants](#)
- [Mixed Finance – Termination of Regulatory & Operating Agreement](#)

Funding in the Conversion Year

For the remainder of the first calendar year in which the Covered Project's Section 8 Housing Assistance Payments (HAP) contract is effective (the "year of conversion"), the PHA will receive funding through the Public Housing Program's Operating Fund and Capital Fund formula based on the level of public housing subsidy that it is eligible to receive under those formulas. Regardless of the initial contract rent amount or Operating Cost Adjustment Factor, these are the funds that the project will rely on for the balance of the calendar year until it begins receiving the HAP payments. New public housing projects are funded in the following way:

- 1) PHAs must follow Operating Fund processing guidance⁶ to initiate funding for new projects. Please note that each year the Operating Fund establishes a new project submission deadline, typically in the early summer of each year. Projects whose actual DOFAs fall after this date

⁵ For PBRA conversions, HUD Asset Management requires that the property and owner information is entered into APPS and that the Management Certification is completed. Please refer to the Resource Desk "Submitting the Financing Plan" section of the Document Library to access '2530 Guidance for RAD Transactions' and '2530 MF Development Compliance and Credit Requirements' for more information.

⁶ See <https://www.hud.gov/sites/dfiles/PIH/documents/pih2021-04.pdf> for Calendar Year 2021 guidance

and/or that fail to provide the Operating Fund submissions by this date will not receive Operating Funds in the year of conversion.

- 2) The public housing Capital Fund provides funding to PHAs each year based on public housing units in PIC on the Capital Fund certification date in the prior calendar year. As such, PHAs do not receive funding for new projects in the year that they come on-line in PIC.

To calculate funding in the year of conversion, all RAD conversions require the PHA to submit the [Initial Year Funding Tool](#) as part of the Financing Plan to ensure that all parties understand funding available. This tool is also submitted in final form at RAD Closing. It is the Initial Year Funding Tool that establishes the subsidy that the PHA will receive in the year of conversion and not the terms set forth in the R&O.

As such, developers and PHAs should take Operating Fund timing considerations into account when considering the planned construction of the project and in creating their budget. The development team will likely require a reserve is established to supplement Operating Funds (if any) until the project is receiving normal RAD rent revenue, particularly if the permanent loan conversion requires stabilized occupancy for a period of time that would be impacted by the lack of both Capital and Operating Funds in the year of conversion. The project will receive the rent revenue outlined in the HAP Contract Rent Schedule on January 1 following the HAP contract effective date, at which time payment of the RAD rents as specified in the HAP contract will begin.

Any permanent loan conversion could occur before, simultaneous with, or after the RAD conversion. Any lenders will need to subordinate their loans to the RAD Use Agreement, and the Office of General Counsel will need to review the draft subordination agreement(s), associated with the loans, that would be signed at closing.

Resident Considerations if Units are Leased as Public Housing

Once the units are in PIC, the PHA can choose whether to begin leasing the units as public housing under public housing rules or to wait and lease only after RAD conversion, when the units are under the Section 8 program. If the units are delivered for occupancy over time (e.g., on a building-by-building basis) and have multiple DOFA dates, the RAD conversion can only occur after all units exist as public housing.

If units are leased as public housing, the PHA must consider the resident engagement requirements under the RAD Notice that are applicable given when the residents begin occupancy relative to where the transaction is in the RAD conversion process. The PHA must take the following additional steps:

- On move-in, inform the residents in writing of the pending RAD conversion through issuance of the [RAD Information Notice](#) (RIN), which may be modified to fit the circumstances.
- If units are built on a building-by-building basis, the CHAP and RCC are not issued until the last building has established a DOFA date in PIC. As mentioned above, the PHA has the option to begin leasing as public housing as the units come on-line in the PIC system or wait till after the RAD conversion. In this scenario, where residents are moving in prior to issuance of the RCC,

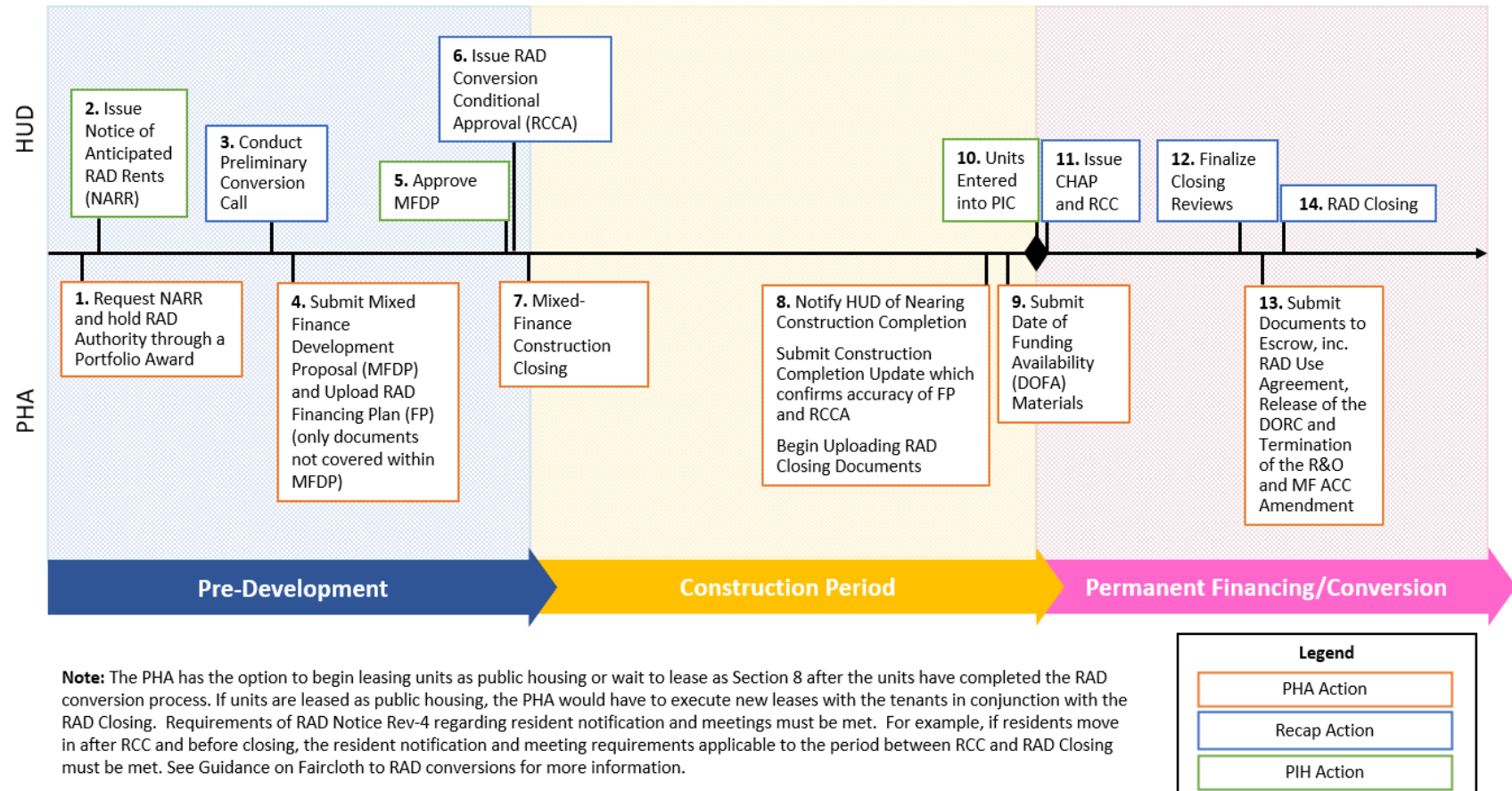
the PHA must conduct all resident engagement activities required during the period between submission of the Financing Plan and issuance of the RCC.⁷

- If residents move in after issuance of the RCC but before the RAD conversion, conduct all resident engagement activities required following issuance of the RCC.
- Include documentation of the Resident Meetings and Comments in the Conversion Overview or in the RAD Closing document submission.
- Prepare new Section 8 leases with the tenants prior to RAD Closing and the new 8 leases shall be signed and effective as of the HAP Contract effective date.

⁷ For purposes of resident engagement in the new construction context, the NARR shall be treated as the equivalent of the CHAP. As the units are entirely new, developed based on Faircloth authority, there are no residents in occupancy pre-application, or prior to the Concept Call, or between the Concept Call and the Financing Plan submission. If the public housing project is a mixed-finance acquisition and rehab of an occupied structure, as opposed to new construction, additional resident engagement processes would apply.

Exhibit A

Faircloth to RAD Conversion Process





U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING

[Date]

[Executive Director Name]
[Housing Authority Name]
[Housing Authority Address]
[Housing Authority City, State and Zip]

Re: Notice of Anticipated RAD Rents for
[Proposed Project Name and Address]
[Housing Authority Name] (PHA)

Dear [Executive Director]:

The Department has received your expression of interest in undertaking public housing development activities and then subsequently converting the public housing assistance under the Rental Assistance Demonstration (RAD) for [number] units at the above-named project.

Public housing development activities are governed by the requirements set forth in 24 C.F.R. Part 905 Subpart F. For a project to be included within the public housing program, the following criteria must be met: 95% of the proposed public housing units must have a certificate of occupancy, the Department must issue a public housing Date of Full Availability (DOFA) applicable to the project (24 C.F.R. 905.108 and 905.600(c)(4)), the Department must activate the public housing unit in the PIH Information Center (PIC) system, and the Department must confirm compliance with all applicable requirements of 24 C.F.R. Part 905 Subpart F. Once these criteria are met, the public housing assistance will be available to these units, which may then be converted through RAD.

Conversion of public housing assistance under RAD is governed by the Consolidated and Further Continuing Appropriations Act of 2012 (P.L. No. 112-55, approved November 18, 2011); as amended by the Consolidated Appropriations Act, 2014 (P.L. 113-76, approved January 17, 2014); the Consolidated and Further Continuing Appropriations Act, 2015 (P.L. 113-235, approved December 16, 2014); the Consolidated Appropriations Act, 2016 (P.L. 113-113, approved December 18, 2015); the Consolidated Appropriations Act, 2017 (P.L. 115-31, approved May 5, 2017); the Consolidated Appropriations Act, 2018 (P.L. 115-141, approved March 23, 2018); section 8 of the United States Housing Act of 1937 (Act), 42 U.S.C. 1437 et seq.; and the Department of Housing and Urban Development Act, 42 U.S.C. 3531 et seq (collectively, the "RAD Statute"). Conversion under RAD is further governed by the requirements contained in the Rental Assistance Demonstration – Final Implementation, Revision 4 Notice H-2019-09 PIH-2019-23 (HA) (the "RAD Notice").

Subject to the conditions enumerated in this letter, this letter serves to notify you that:

- The Department has received the submission of information sufficient to serve as the RAD Application for the above referenced project.
- The Department has confirmed eligibility for the conversion of assistance of ____ units to Section 8 assistance under RAD.

Notice of Anticipated RAD Rents

- The Department will issue a Commitment to Enter into a Housing Assistance Payments Contract (CHAP) for the above-referenced project when the project is eligible to be included within the public housing program pursuant to 24 C.F.R. Part 905 Subpart F.
- Based on the unit mix you have proposed, the RAD unit Contract Rents upon conversion of the above referenced project will be as set forth in the attached Exhibit A.

The foregoing notification is subject to the following conditions:

- Changes in the unit mix and characteristics of the building(s) to be developed may impact the anticipated RAD unit Contract Rents shown in Exhibit A. This notification will need to be amended and updated to be consistent with your public housing development proposal, submitted pursuant to 24 C.F.R. Part 905 Subpart F. To avoid delays, you must provide updated information to HUD if the unit mix and characteristics of the building(s) to be included in the public housing development proposal are modified.
- The units must be developed, fit for occupancy, and included within the public housing program pursuant to the requirements of 24 C.F.R. Part 905 prior to conversion.
- There must be no material change in the status of the public housing authority relative to the criteria set forth in Section 1.3.2 through Section 1.3.7 of the RAD Notice.
- When so instructed by the Department, the PHA must submit through the RAD Resource Desk all documents and certifications necessary to implement a RAD conversion as described in the RAD Notice and must meet the requirements contained in the RAD Notice. This notification shall be interpreted and implemented in accordance with all statutory requirements, and with all HUD requirements, including amendments or changes in HUD requirements, the RAD Notice, and all other applicable RAD guidance.
- ***[If they do not have a Portfolio Award because they don't have an active CHAP and can't find a partner PHA to reserve authority for them, insert the following special condition:*** The RAD statute limits the number of units that may be converted under RAD, and conversion authority may be secured through a Portfolio Award by following the procedures outlined in the RAD Notice. The PHA does not currently have a Portfolio Award reservation. As such, the ability to convert the units discussed in this notification is dependent on the availability of adequate authority for conversion when the project has been issued a DOFA, the public housing units are activated in PIC, and the Department has confirmed compliance with all applicable requirements of 24 C.F.R. Part 905 Subpart F.]
- ***[Insert here any additional conditions unique to this PHA which would normally be included in a CHAP for this PHA.]***

As this represents a conditional notification by the Department, the Department reserves the right to revoke or amend this determination at any time prior to issuance of the CHAP if the Department, in its sole judgment, determines that any of the following conditions are present:

- The PHA or any of the units proposed for development and conversion are not eligible for such activities;
- The PHA could not develop the housing as public housing, convert the housing under RAD, or operate the housing under either public housing or Section 8 due to prior or ongoing litigation;
- The proposed project and conversion strategy is not or will not be financially feasible;
- The PHA cannot demonstrate to HUD's satisfaction that it is making adequate progress for development and conversion;
- The PHA fails to comply with applicable requirements or deadlines;

Notice of Anticipated RAD Rents

- The PHA fails to cooperate with the Department's requests;
- There is any violation of program rules, including fraud;
- The PHA fails to discuss the development plans as a significant action in the PHA's Five-Year Plan, Annual Plan, MTW Plan, or CFP 5-Year Action Plan, as applicable, or fails to submit an approved significant amendment of such documents to HUD; or
- The terms of the development or conversion activities would be inconsistent with fair housing and civil rights laws or a fair housing or civil rights court order, settlement agreement, or voluntary compliance agreement.

The Department will request periodic discussions with the PHA to assess whether the PHA is making adequate progress on the development of the public housing units and on planning for a RAD conversion. To ensure PHAs are making consistent progress, within one year of the date of this letter, the PHA must submit a development plan to the Office of Public Housing Investments. The PHA may submit a request for an extension through a project-specific due date, which request must be adequately justified. Approval of any request for an extension is at HUD's sole discretion. If the Department, in its sole judgment, determines that the PHA has failed to make adequate progress and the Department declines to extend the deadline for submission of a development plan, this notification will be revoked.

If you have any questions or concerns regarding the public housing development process, please contact your Office of Public Housing Investments Grant Manager. For questions or concerns regarding the anticipated RAD conversion process, please contact the Office of Recapitalization by accessing the RAD Resource Desk at www.radresource.net and selecting the option "Contact RAD."

Sincerely,

Susan A. Wilson
Director, Urban Revitalization Division
Office of Public Housing Investments

Notice of Anticipated RAD Rents

EXHIBIT A

Contract Rents Subsequent to a Rental Assistance Demonstration Conversion

The Contract Rents set forth below for the subject proposed public housing project are based on Fiscal Year 2020 Federal Appropriations and assumptions regarding applicable rent caps. Following the review and approval of the public housing development proposal, the final RAD Contract Rents will continue to be based on Fiscal Year 2020 Federal Appropriations and assumptions, without regard to potential changes in appropriation levels between the date hereof and date of the RAD HAP contract. The final RAD Contract Rents will be adjusted to reflect Operating Cost Adjustment Factors (OCAFs) and are subject to applicable program rent caps. In addition, prior to conversion, the PHA must provide HUD updated utility allowances to be included in the HAP contract.

Project Reference: [Proposed Project Name and Address]

| Number of Bedrooms | Number of Contract Units | Contract Rent |
|--------------------|--------------------------|---------------|
| 0 | | |
| 1 | | |
| 2 | | |
| 3 | | |
| 4 | | |
| 5 | | |

MTW Agencies are permitted to apply MTW funds to RAD rents at the time of conversion to increase the contract rents reflected in the above rent schedule. MTW Funds will be confirmed upon issuance of the RCCA.

This rent schedule does not include utility allowances. Utility allowances will be added to the rent schedule and will increase the gross rent when the PHA provides HUD with data on the initial utility allowances. Utility allowances will be confirmed on issuance of the CHAP.

This rent schedule does not include any OCAF adjustment for which the PHA may be eligible. OCAF adjustments will be confirmed on issuance of the CHAP.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-5000

OFFICE OF HOUSING

[Date]

[Executive Director Name]
[Housing Authority Name]
[Housing Authority Address]
[Housing Authority City, State and Zip]

Re: RAD Conversion Conditional Approval for
[Proposed Project Name and Address]

Dear [Executive Director]:

The Department has received your development proposal to create [number] new public housing units at the above referenced project (the "Project Units") pursuant to the requirements of 24 C.F.R. Part 905 Subpart F and your request for the subsequent conversion of such newly created public housing units under the Rental Assistance Demonstration (RAD).

As explained in the Notice of Anticipated RAD Rents dated _____, conversion under RAD is only possible after the Project Units have been built and the Department confirms compliance with the requirements of 24 C.F.R. Part 905 Subpart F and activates the units as public housing in the PIH Information Center (PIC) system. At that time, conversion of public housing assistance under RAD is governed by the Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55, approved November 18, 2011; the Consolidated and Further Continuing Appropriations Act of 2015 (P.L. 113-235), approved December 6, 2014; the 2017 Consolidated Appropriations Act (P.L. 115-31), approved May 5, 2017; the Consolidated Appropriations Act of 2018 (P.L. 115-141), approved March 23, 2018; section 8 of the United States Housing Act of 1937 (Act), 42 U.S.C. 1437 et seq.; and the Department of Housing and Urban Development Act, 42 U.S.C. 3531 et seq (collectively, the "RAD Statute"). Conversion under RAD is further governed by the requirements contained in the Rental Assistance Demonstration – Final Implementation, Revision 4 Notice H-2019-09 PIH-2019-23 (HA) (the "RAD Notice").

In conjunction with the approval by HUD's Office of Public Housing Investments (OPHI) of the development proposal under the requirements of 24 C.F.R. Part 905 Subpart F, HUD's Office of Recapitalization (Recap) has determined that, except as noted in this letter and the attachments hereto, the documents submitted to OPHI and Recap with respect to the Project Units satisfy the requirements of the Financing Plan under the RAD Notice and that your request meets RAD requirements. This letter serves as a conditional approval of your request to convert the Project Units under RAD.

In the event of a RAD conversion, the Project Units will receive rental assistance in the form of a 20-year [Project Based Rental Assistance/Project Based Voucher] Housing Assistance Payment (HAP) contract. Attached to this conditional approval as "Attachment A" is a draft of the RAD Conversion Commitment ("RCC"). This draft RCC includes the following exhibits:

RAD Conversion Conditional Approval

- **Exhibit A:** Special conditions and additional provisions of the anticipated RCC;
- **Exhibit B:** Anticipated Sources and Uses;
- **Exhibit C:** Monthly HAP Contract Rents; and
- **Exhibit D:** Scope of Work in addition to the work identified in the approved public housing development proposal.

Final approval and authority to implement the conversion of the Project Units is subject to the following conditions:

- 1) The Project Units must be developed, fit for occupancy, and included within the public housing program pursuant to the requirements of 24 C.F.R. Part 905 Subpart F.
- 2) There must be no material change in the status of the public housing authority relative to the criteria set forth in Section 1.3.2 through Section 1.3.5 and in Section 1.3.7 of the RAD Notice.
- 3) All the conditions and requirements of the draft RCC apply to this conditional approval.
- 4) ***[If they do not have a Portfolio Award because they don't have an active CHAP and can't find a partner PHA to reserve authority for them, insert the following special condition:*** The RAD statute limits the number of units that may be converted under RAD, and conversion authority may be secured through a Portfolio Award by following the procedures outlined in the RAD Notice. The PHA does not currently have a Portfolio Award reservation. As such, the ability to convert the units discussed in this notification is dependent on the availability of adequate authority for conversion when the project has been issued a DOFA, the public housing units are activated in PIC, and the Department has confirmed compliance with all applicable requirements of 24 C.F.R. Part 905 Subpart F.]
- 5) ***[Insert here any additional conditions unique to this PHA which would normally be included in a CHAP for this PHA.]***

As this notification is a conditional commitment by the Department, the Department reserves the right to revoke or amend this determination at any time prior to issuance of the CHAP and/or the RCC if the Department, in its sole judgment, determines that any of the following conditions are present:

- The PHA or any of the units proposed for development and conversion are not eligible for such activities;
- The proposed development and conversion strategy no longer meets the program and underwriting requirements of the RAD Notice;
- The PHA could not develop the housing as public housing, convert the housing under RAD, or operate the housing under either public housing or Section 8 due to ongoing litigation, an injunction or ruling issued by a court of competent jurisdiction;
- The PHA fails to comply with applicable requirements or deadlines;
- The PHA fails to cooperate with reasonable requests from the Department related to the Project Units;
- There is any violation of program rules, including fraud; or
- The terms of the development or conversion activities would be inconsistent with fair housing and civil rights laws or a fair housing or civil rights court order, settlement agreement, or voluntary compliance agreement.

RAD Conversion Conditional Approval

When the Project Units are approaching or have achieved construction completion, the PHA must submit through the RAD Resource Desk a "Completion Update" comprised of 1) a certification that the completed project is consistent with the documents reviewed by OPHI and Recap prior to issuance of this conditional approval or disclosing any material changes from such documents and 2) such additional documents and certifications as may be necessary to implement a RAD conversion as described in the RAD Notice.

Following Recap's review and approval of the Completion Update and OPHI's confirmation that the project is included within the public housing program pursuant to 24 C.F.R. Part 905 Subpart F, the Department will issue for the above-referenced project a Commitment to Enter into a Housing Assistance Payments Contract (CHAP) and an RCC in the form attached hereto as Attachment A, as amended consistent with the Completion Update.

Regardless of whether the RAD conversion closes, HUD shall not be responsible for any expenses or transaction costs incurred by you or at your direction in connection with the RAD-related aspects of the transaction.

This conditional approval shall be interpreted and implemented in accordance with all HUD statutory and regulatory requirements, the RAD Notice, and all other applicable RAD guidance.

Thank you for your commitment to affordable housing and your interest in the RAD program. If you have any questions regarding your proposed RAD conversion, please contact the Office of Recapitalization by accessing the RAD Resource Desk at www.radresource.net and selecting the option "Contact RAD."

Sincerely,

Thomas R. Davis
Director, Office of Recapitalization

Attachments: Attachment A: Draft RAD Conversion Commitment

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Office of Public and Indian Housing

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Public reporting burden for this collection of information is estimated to average 16 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This collection of information is required for developing a Mixed-Finance rental project pursuant to HUD regulations 24 CFR 905. The information will be used to provide HUD with sufficient information to enable a determination that the proposed housing project is demographically and financially feasible and that HUD statutory and regulatory requirements have been met.

Pursuant to 24 CFR 905.606, prior to developing public housing, either through new construction or through acquisition (with or without rehabilitation), public housing authorities (PHA) must submit a Development Proposal to HUD which contains information about the project. Submission of a Development Proposal allows HUD to assess the viability and financial feasibility of a proposed project and to assure compliance with public housing regulations.

A Development Proposal must be submitted for all types of public housing development, including mixed-finance development. If a PHA does not submit a Development Proposal and secure HUD approval, the PHA may have to repay any public housing funds used in conjunction with the project.

The purpose of this document is to provide a template for preparation of the Development Proposal. Information may be typed directly into the form. This template may be used for all types of public housing development. However, it is required to be used for mixed-finance public housing development. This document replaces the previously used Rental Term Sheet (HUD form 50030). This document may also be modified by HUD for use with projects including development of non-public housing units through programs such as Choice Neighborhoods, RAD, or Moving to Work.

This document, along with its attachments, generally includes all information required to be included in a Development Proposal, though HUD reserves the right to request additional information or to require less information to carry out its review. In addition, for mixed-finance projects, this document identifies additional documentation needed to allow HUD to complete a Subsidy Layering Analysis for the project, as required under section 102(d) of the HUD Reform Act of 1989. Note that this Subsidy Layering Analysis does not satisfy the subsidy layering requirements related to Housing Choice Vouchers.

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For non-mixed-finance public housing development, the Development Proposal and all attachments must be submitted to the appropriate HUD Field Office.

For mixed-finance projects or other non-public housing development, Development Proposals and all attachments must be submitted to HUD Headquarters, Office of Public Housing Investments. PHAs should work with their assigned HUD Project Manager to prepare the Development Proposal. Submission must be made well in advance of closing to allow adequate time for review and approval.

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Section 1: Project Information

PHA: _____

Project Name: _____

_____ (Old Name, if applicable)

PIC Project Number: _____

PHA Contact Person: _____

Phone Number: _____

Email: _____

MTW Agency? ☐ Yes ☐ No

RAD Conversion? ☐ Yes ☐ No

HOPE VI Grant Name: _____

HOPE VI Grant Number: _____

Choice Neighborhoods Grant Name: _____

Choice Neighborhoods Grant Number: _____

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Section 2: Project Description*

Provide a narrative description of the proposed project that gives an overview of the project, including the following information:

- Current project status (ownership, units, occupancy, condition, etc.)
- Proposed project status
- Development method (new construction, rehab, acquisition, etc.)
- Housing type (elevator, walk-up, row house, detached/semi-detached)
- The number of units by type (public housing, LIHTC, PBV, unrestricted, etc.) using Form A of the Development Proposal Calculator
- Proposed energy rating for units (energy star, LEED, local code, etc.)
- Proposed type of internet access
- Non-dwelling space type & size (community center, maintenance shed, etc.)
- Phasing plan (if this project is part of a larger, multi-phases development)
- Proposed residents to be served (families, elderly, disabled, etc.)
- Role of PHA
- Identification and description of Developer
- Description of project plans to convert assistance through a RAD conversion, if applicable
 - Selection of Program Platform: Project Based Vouchers (PBV) or Project Based Rental Assistance (PBRA) Housing Assistance Payments (HAP) contract
- Other pertinent information
- Identification of any work requirement or work preference for public housing residents

* Information in this Section 2 must also be included in Exhibit B of the Mixed-Finance Amendment to the ACC Amendment for the project.

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Section 3: Site Information

Provide information on the development site, including the following:

- A physical description of the site
- Environmental issues
- Description of the neighborhood
- Proximity of site to retail, education, social services, transportation, jobs, etc.
- Describe any unusual features which might affect development
- Site map
- Map of the surrounding neighborhood and city
- Other pertinent information

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Section 4: Key Development Partners and Participating Parties*

Provide the following information for each major partner in the Project:

| ROLE | ENTITY NAME & CONTACT INFORMATION (person, phone & email) | FINANCIAL INTEREST (%) | RELATIONSHIP TO PHA (if any) |
|---|--|-----------------------------------|---|
| Developer | | | |
| Ownership Entity | | | |
| General Partner or Managing Member of the Owner | | | |
| Limited Partner or Investor/Limited Member of the Owner | | | |
| Public Housing Authority, Instrumentality or Affiliate | | | |
| Property Manager | | | |
| Construction Lender | | | |
| Permanent Lender(s) | | | |
| Other | | | |
| Other | | | |
| Other | | | |

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For RAD, documents must demonstrate how the ownership will meet RAD's Ownership and Control requirements (See Section 1.4.A.11 of the RAD Notice). Provide the following information about the Development Team:

- Identification of all participants, including the PHA, the general contractor, the legal entity that will own the project, the proposed management agent, and all "principals" of those entities. The submission must disclose any identity of interest between any of the parties.
- For PBRA conversions, evidence that all principals have Previous Participation Certification in the Active Partners Performance System (APPS) (formerly the Form 2530) and are not be debarred, suspended, or subject to a Limited Denial of Participation.⁸

If a PHA instrumentality or affiliate is involved in the project, provide a description of the relationship between the PHA and the instrumentality/affiliate as it relates to the project (see PIH Notice 2007-15):

*Information in this Section 4 must also be included in Exhibit A to the Mixed-Finance Amendment to the ACC for the project.

⁸ The APPS/2530 applies to all FHA transactions and transactions in which 20% of the units in the Covered Project will be covered under a PBRA contract (PBV transactions without FHA financing are exempt). The PHA and any entities wholly owned by the PHA are not subject to 2530/APPS. For LLCs and LPs, non-PHA members and partners, respectively, with 25% or more of the ownership interests are subject to approval provided that for LIHTC transactions, limited partners or investment members are exempt. For non-profit entities, 2530s are required for Board Officers but not Board Members. Management agents are subject to 2530 unless wholly-owned.

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Section 5: Project Schedule*

Provide projected dates for each activity identified below:

| ACTIVITY | COMPLETION DATE |
|--|-----------------|
| Demolition Approval from HUD | |
| Disposition Approval from HUD | |
| LIHTC Award | |
| Environment Review Completed (HUD-7015.16 signed) | |
| Relocation Completed | |
| Financial Closing | |
| Abatement/Demolition Completed | |
| Construction Start | |
| Construction Completed | |
| Target Date of Full Availability (DOFA) for Public Housing Units | |
| LIHTC Placed-in-Service Date | |
| Lease Up Complete | |
| Submission of Final Cost Certification | |
| Other: | |
| Other: | |

*Information in this Section 5 must also be included in Exhibit D of the Mixed-Finance Amendment to the ACC Amendment for the project.

Section 6: Compliance with Design and Accessibility Requirements

The design of the project, including the lay-out of units, must comply with accessibility requirements specified at 24 CFR 905.312 and 905.604(g) and any other requirements which apply to the specific project.

PHAs must submit the following architectural plans:

- Site Plan
- Building Plans
- Sections and Elevations
- Unit Plans

The following information must be reflected on the plans or separately provided:

- Site Plans: show exterior private spaces, public recreational areas, location of trees to shade walks, parking areas, etc.
- Building Plans: show the location, type, and mix of accessible and visitable units
- Exterior Elevations and Building Sections: identify materials on walls and roof areas
- Unit Plans: show the livability of the spaces within the dwelling unit by providing adequate floor area for furniture and circulation spaces
- Energy efficiency/green design

Plans for mixed-finance projects will be reviewed by a HUD architect. Before submitting plans, the PHA should consult with the HUD Project Manager to determine where the plans should be sent and in what format, i.e. hard copy, electronic, CD, etc.

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Section 7: Project Costs

Provide the following information regarding project costs and financing:

A: Project Budget*

- Provide a construction period project budget reflecting all sources and uses of funds (including grant numbers, if applicable) during project construction using Construction Budget Tab of the Development Proposal Calculator.
- Provide a permanent project budget reflecting all sources and uses of funds (including grant numbers, if applicable) following construction completion using the Permanent Budget Tab of the Development Proposal Calculator.
- Provide a construction draw schedule that shows the projected sources and uses of funds on a monthly basis throughout the construction period using the Draw Schedule Tab of the Development Proposal Calculator.

*The construction and permanent project budgets must also be included in Exhibit F of the Mixed-Finance Amendment to the ACC for the project.

B. Compliance with Total Development Cost (TDC) and Housing Construction Cost (HCC) Limits

- Projects must comply with TDC and HCC limits imposed by HUD on the development of public housing units, pursuant to 24 CFR 905.314. Provide a calculation of TDC and HCC limits for the project using TDC and HCC Tab of the Development Proposal Calculator.

C. Pro Rata Test

- The proportion of public housing funds to total project funds may not exceed the proportion of public housing units to the total number of units. For example: if there are 100 units and 40 are public housing, the amount of public housing funds committed to the project cannot exceed 40% of the total project budget. Note: projects which use public housing funds to construct non-public housing units may include these units in the pro rata test.

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- NOTE: the pro rata test applies only to those project costs shown in "Part A" of permanent project budget in the Development Proposal Calculator. "Part B" costs, which are generally costs incurred by the PHA, are not included.
- Provide the following information:

| Type | Number/Amount | Percent of Total |
|--|---------------|------------------|
| Public Housing Units/Approved Non-PH units | | |
| Non-Public Housing Units | | |
| Total Housing Units | | 100% |
| | | |
| Public Housing Funds | | |
| Non-Public Housing Funds | | |
| Total Funds | | 100% |

D. Construction Cost Estimate

- Submit an independent construction cost estimate (cover letter and summary page showing costs broken down by major trades) or the actual construction contract which supports the permanent and construction budgets provided above.

E. Limitation on the Cost of New Construction

- A PHA may not construct new public housing unless the cost of construction is less than the cost of acquiring existing units (with or without rehab.)
- For projects involving new construction, provide the following:

1) Documentation which shows the construction cost of the new project is less than the cost to acquire (and rehab as necessary) similar units in the same neighborhood that would serve the same purpose as the new housing; or,

2) Documentation which shows there is insufficient housing in the neighborhood to acquire that would serve the same purpose as the new housing.

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F. Predevelopment Costs

- Pursuant to 24 CFR 905.612(a)(2), use of public housing funds for predevelopment expenses related to mixed-finance projects must be approved by HUD prior to expenditure. PHAs should submit requests to HUD prior to expenditure of funds for predevelopment activities.
- The percentage of predevelopment costs borne by the PHA should be in compliance with HUD's "Cost Control and Safe Harbor Standards for Mixed-Finance Development (April 2003) (Safe Harbor Standards)." Provide the following Information:

Total Predevelopment Costs: \$ _____

Amount paid by the PHA: \$ _____ %

Amount paid by the Developer: \$ _____ %

- Provide a justification if the Safe Harbor Standard is exceeded:

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Section 8: Project Financing*

A. Project Financing

- Provide a separate description for each source of financing, i.e., public housing, other public, and private (construction and permanent) included in the project budget. In the description, include the following:
 - 1) Name of the provider
 - 2) Amount
 - 3) Use of funds
 - 4) Grant number (if Capital Funds, RHF, HOPE VI, Choice, etc.)
 - 4) Type of financing (grant, permanent loan, construction loan, second mortgage, etc.)
 - 6) Terms of the financing, such as: length of the loan, interest rate, debt service payments, deferred amounts debt coverage ratio, other lender requirements
 - 7) Other relevant information
- NOTE: Construction loans made by housing authorities or grantees with federal funds may not earn interest.

B. Federal Low Income Housing Tax Credits (LIHTC)

- For projects that include LIHTC, provide the following information:

| | | | | | | |
|---|----|--|--|----|--|--|
| Total Tax Credit Allocation | \$ | | | | | |
| Total Equity Commitment | \$ | | | | | |
| Equity Per Dollar of Allocation (Equity divided by Allocation) | \$ | | | | | |
| Type of Tax Credits | 9% | | | 4% | | |

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| | | |
|-------------------------------------|-----------------------|---------------|
| Pay in Schedule for Investor Equity | | |
| Milestone | Projected Date | Amount |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| TOTAL AMOUNT OF EQUITY | | \$ |

- Describe the proposed exit strategy for the Investor at the end of the 15 year LIHTC compliance period, including the role of the PHA, continued preservation of affordable units, and how any exit taxes will be paid.

C. Other Tax Credits

- For projects that include other types of tax credits, such as state LIHTC, federal and state historic preservation, new market, etc. provide the following:

| | |
|--------------------|------------------|
| Type of Tax Credit | Amount of Equity |
| | |
| | |
| | |

D. Existing Financing

Identify any existing financing, such as funds through a Capital Fund Financing Program (CFFP) transaction or an Energy Performance Contract (EPC).

- Identify the amount of funding.
- Describe how the debt will be addressed as part of the new project.
- Provide evidence of approval

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E. Reserve Accounts

Public housing funds may be contributed towards reserve accounts, subject to the following limitations:

- Public housing funds may not be used to initially fund reserve accounts, with the exception of establishment of an Initial Operating Subsidy Reserve for public housing units only.
- Public housing Operating Subsidy and public housing tenant rents may be used to replenish reserve accounts, but only to replace funds which have been disbursed for allowable public housing expenses.
- Public housing Operating Subsidy and public housing tenant rents may be used to fund the Replacement Reserve, but only in an amount proportionate to the number of public housing units.
- Public housing funds may not be used to fund an Exit Tax Reserve.
- Public housing funds in all reserve accounts must be tracked separately
- Public housing funds in all reserve accounts must remain with the project if sold/ transferred or returned to the PHA.
- Reserve accounts must be described in detail in the Regulatory and Operating Agreement between the PHA and the Owner Entity.

Submit the following information for each Reserve Account included in the project:

1) Initial Operating Period/Lease-Up Reserve (public housing only): \$ _____

| | |
|---|--|
| Identify source of funds to establish reserve account | |
| Identify source of funds to replenish reserve account | |
| Briefly describe when funds may be drawn down | |
| What entity owns the reserve account | |

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2) Operating Subsidy Reserve (public housing only): \$ _____

| | |
|---|--|
| Identify source of funds to establish reserve account | |
| Identify source of funds to replenish reserve account | |
| Briefly describe when funds may be drawn down | |
| What entity owns the reserve account | |

3) Operating Deficit Reserve: \$ _____

| | |
|--|--|
| What type of units does this cover (all, only PH, only non-PH, etc.) | |
| Identify source of funds to establish the reserve account | |
| Identify source of funds to replenish reserve account | |
| Briefly describe when funds can be drawn down | |
| What entity owns the reserve account | |

4) Replacement Reserve: \$ _____ per unit per month

| | |
|---|--|
| What type of units does this cover (all, only-PH, only non-PH, etc.)? | |
| Identify source of funds to establish reserve account | |
| Identify source of funds to replenish reserve account | |
| Briefly describe when funds can be drawn down | |
| What entity owns the reserve account | |

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For RAD, the annual deposit to the replacement reserve must be based on a financial model (the 20-year capital needs schedule and associated determination of the Initial Deposit to Replacement Reserve, or IDRR, and the Annual Deposit to Replacement Reserve, or ADRR). However, if the MFDP entails new construction or the use of 9% LIHTC, no financial model is needed as long as the annual deposit to the replacement reserve is at least \$450 per unit per year (\$37.50 per unit per month).

5) Other: Identify other reserve accounts and provide the above information for each.

*Information in this Section 8 must also be included in Exhibit B to the Mixed-Finance Amendment to the ACC for the project.

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Section 9: Project Fees

The HUD Cost Control and Safe Harbor Standards provide guidance for certain fees and costs related to development. Projects must comply with these Safe Harbor Standards or provide justification for non-compliance. In addition, Choice Neighborhoods projects which include Project Based Vouchers or Project Based Rental Assistance must comply with the "Cost Control and Safe Harbor Standards for Section 8 Projects under Choice Neighborhoods Program, dated November 2015."

A. Calculation and Pay Out of Developer Fee

- The amount of the Developer Fee must be in accordance with the Safe Harbor Standards. Complete the Fees Tab 6 of the Development Proposal Calculator to accurately calculate the Developer Fee.
- Total Amount of Developer Fee: \$_____ = _____% of project costs
- Amount of Fee Paid to Developer: \$_____ = _____% of project costs
- Amount of Fee Paid to PHA: \$_____ = _____% of project costs
- If the Developer Fee exceeds the Safe Harbor Standards, provide a justification, based on the criteria in the Safe Harbor Standards.
- What is the pay-out schedule for the Developer Fee? Identify the milestone, such as closing or 50% construction completion, and the percent of the fee to be paid at each milestone.

| Milestone | % of Developer Fee Paid |
|-----------|-------------------------|
| | |
| | |
| | |
| | |

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- If the Developer Fee pay-out schedule exceeds the Safe Harbor Standards, provide a justification.

Justification: |

- If the PHA is providing a loan to the developer to cover developer overhead prior to financial closing, provide a description and justification. HUD approval is required prior to payment of any part of the developer fee.

Description and Justification: |

- Is the developer receiving any compensation separate from the Developer Fee, i.e., master planning, relocation, demolition, etc.? If so, identify below:

| TASK | COMPENSATION |
|------|--------------|
| | |
| | |
| | |
| | |

B. Contractor Fees

- The fee paid to the construction contractor must be in accordance with the Safe Harbor Standards. Complete the form in Tab 7 of the Development Proposal Calculator to accurately calculate the Contractor Fee.

| Contractor Fee | Amount | % of Hard Construction Costs |
|---------------------------------------|--------|------------------------------|
| Profit | | |
| Overhead | | |
| General Conditions + Performance Bond | | |
| TOTAL | | |

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- If the total amount of the Contractor Fee exceeds the Safe Harbor Standards, provide a justification.

Justification: |

- Provide a written explanation of how construction savings (if any) will be allocated among the development parties. NOTE: per the Safe Harbor Standards, developers can only receive an amount equal to an additional 1% developer fee, with a maximum of a 12% fee.

Explanation: |

C. Identity of Interest

- If there is an identity of interest between the Developer and the contractor/builder, i.e., a financial relationship between the two parties, the Developer may award the construction contract to the related contractor/builder only if it has met one of the following requirements prior to HUD approval of the Development Proposal. Check the appropriate box and attach the required information:

☐ 24 CFR 905.604(i)(1): there has been a bidding procedure and the related contractor's bid was the lowest bid received. Provide documentation on the bidding process and bids received.

☐ 24 CFR 905.604(i)(2): there is an independent third party cost estimate that shows the related contractor's price to be at or below the cost estimate. Provide a copy of the cost estimate and the related contractor's cost or construction contract.

C. Property Management Fees

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- The fee paid to the Property Manager must be in accordance with the Safe Harbor Standards and must be described fully in the Management Agreement, which will be reviewed by HUD as part of its review of evidentiary materials.

- Identify the Property Manager: _____

- Is the Property Manager a: ☐ PHA
☐ PHA Instrumentality/Affiliate
☐ Private Company
☐ Private Company but affiliated with the
Developer/Owner
☐ PHA/Private Joint Venture
☐ Other (explain) _____

- Describe how the Property Management Fee will be calculated:

Description: _____

- If the Property Management Fee exceeds the Safe Harbor Standards, provide a justification.

Justification: _____

- Identify any additional fees paid to the Property Manager. Indicate the amount or the fee and/or how the fee is calculated or earned.

| Fee Description | Fee Amount/Calculation |
|-----------------|------------------------|
| | |
| | |
| | |

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D. Fees or Income Paid to the PHA*

- Payments received by the PHA, such as developer fees or loan repayments, are generally referred to as program income. The PHA's use of program income is often restricted, depending upon the source of public housing funds contributed to the project.
- Identify any fees or income to be paid to the PHA or its instrumentality/affiliate and the proposed use of the funds:

| Source of Income | Amount | Use |
|---------------------------|---------------|------------|
| Developer Fee | | |
| Loan Repayment (if fixed) | | |
| Bridge Loan Interest | | |
| Other: | | |
| Other: | | |
| Other: | | |

*Information included in Paragraph D of Section 9 will also be included in Exhibit H of the Mixed-Finance Amendment to the ACC for the project.

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Section 10: Operating Pro Forma

To allow HUD to review the financial feasibility of the project, provide the following:

A) Provide a 15 year operating pro forma, including assumptions, using the pro forma included in the Development Proposal Calculator.

- Show all income and expenses, debt service, and distribution of cash flow (cash flow waterfall) on the pro forma.

For the public housing units, show, below, how the amount of public housing operating subsidy shown on the pro forma was calculated. Identify the projected PEL, UEL, add-ons, tenant rents, pro-ration, etc. Include assumptions made. Discuss on what information you based your numbers and assumptions.

- For RAD, the revenue for the public housing units must be based on the RAD Notice of Anticipated RAD Rents.

Methodology Discussion: | |

- Will all of the Operating Subsidy received by the PHA from HUD be transferred to the Owner Entity? If not, describe how the amount transferred to the Owner Entity will be determined, e.g., a percent of the subsidy, the actual gap between income and expenses, a negotiated amount, etc.
NOTE: This is not applicable for RAD conversions.

Description: | |

- Note: Detailed information regarding payment of Operating Subsidy should be contained in the Regulatory and Operating Agreement and will be reviewed by HUD as part of its review of evidentiary documents.

B) Indicate, below, the waterfall or order of distribution of Net Operating Income, identifying all payments for debt service, fees, reserves, loans and excess cash flow.

Distribution: | |

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Section 11: Local Cooperation Agreement

Attach the following to the Development Proposal:

- A copy of the Cooperation Agreement with the local jurisdiction covering the public housing units OR
- For mixed-finance projects only, if public housing units are to be subjected to local real estate taxes, provide documentation/certification from an authorized official of the local jurisdiction that the project is consistent with the jurisdiction's Comprehensive Plan (previously known as a comprehensive housing affordability strategy.)
- For RAD, where the PHA indicates continuation of a Payment In Lieu of Taxes (PILOT), provide a legal opinion based upon state and local law of continuation of PILOT post conversion to a Section 8 contract. If the PILOT will not be continued after conversion, the PHA must provide documentation of real estate tax estimates.

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Section 12: Environmental Review Process and Documentation

This project is subject to the environmental regulations found at 24 CFR part 58 or, if approved by HUD, 24 CFR part 50. The PHA must comply with all environmental review requirements, as required, including 24 CFR 905.602(f), prior to approval of the Development Proposal.

- Provide a brief narrative on the status of the environmental review process:

Status: []

- Provide a brief narrative on the status of the “Section 106” (historic preservation) review process.

Status: []

For RAD, if the property is converting to PBRA, the PHA may either a) request a Part 50 review or b) have a Responsible Entity perform a review under Part 58 for the purposes of the MFDP and subsequently re-use the reports in a submission of a streamlined Part 50 Review under RAD.

Upon completion of the environmental review process, provide the following documentation:

- Form HUD-4128, Environmental Assessment and Compliance Findings for Related Laws (part 50)
- Form HUD-7015.15, Request for Release of Funds and Certification (part 58 only)
- Form HUD-7015.16, Authority to Use Grant Funds (part 58 only)

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Section 13: Market Analysis

For mixed-finance projects which include the development of non-public housing units, provide the following, which should support the proposed development of non-public housing units:

- Attach the Executive Summary of the market analysis for the project.

For RAD, no market analysis is needed if all units in the project will be fully assisted under Section 8.

Section 14: Other Requirements

As applicable, provide the following information:

A) PHA Annual Plan/MTW Plan & Capital Fund Action Plan or MTW Plan: The project must be included in the PHA's Annual Plan or MTW Plan and the Capital Fund Program 5-Year Action Plan. Discuss the status of the plan approval processes.

NOTE: For RAD, the conversion must be included as a significant amendment to the Annual Plan/MTW Plan and approved by the HUD Field Office, unless included in the original Plan. A copy of the HUD Field Office approval letter must be submitted prior to closing. In addition, for MTW PHAs, an approved RAD amendment to Attachment A of the MTW Agreement may also be required.

Status: []

B) Faircloth Limits: Development of the project cannot result in an increase in the number of public housing units owned, assisted or operated by the PHA on October 1, 1999, as required by 24 CFR 905.602((b)). Provide the following:

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| | |
|---|--|
| # public housing units Oct 1, 1999 | |
| # public housing units (in PIC) today | |
| # net new public housing units created by project | |
| TOTAL public housing units after project completion | |

C) Site and Neighborhood Standards: The project must be reviewed and approved by the HUD Field Office for compliance with Site and Neighborhood Standards, including those contained in 24 CFR 905.602(d), prior to approval of the Development Proposal. Provide a brief status of this approval process.

NOTE: Site and Neighborhood Standards do not apply to HOPE VI and Choice Neighborhoods projects. Project must comply with provisions of the Grant Agreement.

Status: | |

D) Relocation: Relocation activities, if any, must meet the requirements of 24 CFR 905.308(b)(9) or as provided in a HOPE VI or Choice Grant Agreement. Provide a brief status of relocation activities.

Status: | |

E) Resident Consultation: The PHA must have consulted with affected public housing residents prior to submission of the Development Proposal to solicit resident input into development of the project, as required by 905.600(c)(2) or as provided in a HOPE VI or Choice Neighborhoods Grant Agreement. Provide a brief description of how residents were consulted.

Description: | |

F) Acquisition of New Units: If the project involves acquisition of units that are less than 2 years old, the project may not have been constructed with the intention of selling it to the PHA unless all applicable Federal requirements were met, as required by 24 CFR 905.600(b)(3). If applicable, provide a brief discussion of compliance with this provision.

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Discussion: | |

G) Vouchers: If the project includes Project-Based Housing Choice Vouchers (PBV), the PHA must receive separate approval of the vouchers from the HUD Field Office prior to approval of the Development Proposal, including a separate subsidy layering review. If applicable, provide a brief status of the PBV approval process.

Status: | |

H) Designated Housing: If the project includes Designated Housing, the PHA must include the project in its Designated Housing Plan, which must have been approved by HUD prior to approval of the Development Proposal. If applicable, provide a brief status on approval of the Designated Housing Plan.

NOTE: This is not applicable in RAD conversions. Section 8 properties cannot be designated.

Status: | |

I) Demolition/Disposition: If the project includes demolition of existing public housing units and/or disposition (sale or lease) of public housing property, a separate approval must be received from the HUD Special Applications Center. If applicable, provide a brief status on the receipt of these approvals.

NOTE: HOPE VI and Choice Neighborhoods projects follow program specific guidance.

Status: | |

**Section 15: Submission and Approval of Draft Evidentiary Documents for
Mixed-Finance Projects**

For mixed-finance projects only, the following documents must be submitted in draft form to HUD for review and approval prior to HUD approval of the Development Proposal and prior to execution of the evidentiary documents, unless otherwise approved by HUD. Note: submission of these documents may be made separately after submission of the other elements of the Development Proposal.

- A) Mixed-Finance Amendment to the ACC (HUD Model Document)
- B) HUD Declaration of Restrictive Covenants and Partial Release of the existing Declaration of Trust, if applicable (HUD Model Document)
- C) Regulatory and Operating Agreement between the PHA and the owner entity
- D) Ground Lease and Memorandum of Ground Lease between the PHA and the owner entity
- E) Legal Opinion from PHA counsel (HUD Model Document)
- F) Updated Development Proposal and Development Proposal Calculator, reflecting any changes in the project since the original submission
- G) HUD Certifications and Assurances (form HUD-50161)
- H) Title Policy (pro forma submitted prior to closing and final policy submitted after closing showing HUD Declaration of Restrictive Covenant recorded in the order approved by HUD (reviewed by the HUD Field Office))

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- I) ALTA Survey (reviewed by the HUD Field Office)
- J) Management Plan, Management Agreement, and sample Tenant Lease (reviewed by the HUD Field Office)
- K) Other documents as may be required by HUD

Upon completion of HUD's review of the Development Proposal and the draft evidentiary documents listed above, HUD will issue a letter to the PHA which will approve the Development Proposal and the draft evidentiary documents and authorize the PHA to proceed with financial closing. However, no public housing funds may be expended by the PHA until the final, executed evidentiary documents have been submitted to and approved by HUD

**Section 16: Submission and Approval of Final Evidentiary Documents for
Mixed-Finance Projects**

For mixed-finance projects only, after financial closing, the PHA must submit the following information to HUD for approval:

- A) a compact disc (CD) or other electronic medium approved by HUD containing copies of all executed and recorded evidentiary documents previously submitted and approved by HUD in draft form. Each document should be copied to the CD or other electronic medium as a discrete file. All documents must be indexed to allow for uncomplicated retrieval;
- B) the required HUD opinion of counsel (HUD Model Document);
- C) a certification from PHA counsel attesting that no significant changes have been made to the evidentiary documents previously submitted to and approved by HUD in draft form, or if changes have been made, a list of all changes, and;
- D) the final title insurance policy that reflects the recordation of all liens, mortgages and encumbrances against the property in the order approved by HUD.

HUD will issue a final letter to the PHA which approves the executed evidentiary documents and authorizes expenditure of the public housing funds committed to the project.

Section 17: Cost Certification

Within one year of project completion, the PHA must submit to the Field Office the Actual Development Cost Certificate (Form HUD-52427) or Development Cost Budget/Cost Statement (HUD -52484) or another form or format as specified by the Field Office.

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Section 18: Attachments & Additional Submissions to the Development Proposal

- Attachment 1: Site Map
- Attachment 2: Neighborhood/City Map
- Attachment 3: Architectural Plans
- Attachment 4: Construction Draw Schedule
- Attachment 5: Independent Construction Cost Estimate
- Attachment 6: Documentation on Limitation on Cost of New Construction
- Attachment 7: Documentation on Identify of Interest (if applicable)
- Attachment 8: Cooperation Agreement or Documentation of Consistency with
Comprehensive Plan
- Attachment 9: Environmental Compliance Documentation
- Attachment 10: Market Analysis Executive Summary
- Attachment 11: Draft Evidentiary Documents (may be submitted after other elements of
the Development Proposal, but prior to HUD approval)
- Attachment 12: Final Evidentiary Documents (submitted after financial closing)

PHAs with Over 1,000 Faircloth Units (as of 9/30/21)

| State | Public Housing Authority | Potential New Homes |
|-------|---|---------------------|
| IL | Chicago Housing Authority | 19,544 |
| NY | New York City Housing Authority | 12,089 |
| LA | Housing Authority of New Orleans | 10,347 |
| GA | Housing Authority of the City of Atlanta Georgia | 9,136 |
| PA | Philadelphia Housing Authority | 7,018 |
| MD | Housing Authority of Baltimore City | 6,213 |
| PA | Housing Authority of the City of Pittsburgh | 5,386 |
| TN | Memphis Housing Authority | 4,582 |
| MI | Detroit Housing Commission | 4,256 |
| OH | Columbus Metropolitan Housing Authority | 3,826 |
| NJ | Newark Housing Authority | 3,603 |
| MO | St. Louis Housing Authority | 3,452 |
| RQ | Puerto Rico Public Housing Administration | 3,189 |
| DC | District of Columbia Housing Authority | 3,049 |
| TX | Housing Authority of the City of Dallas, Texas | 3,049 |
| MA | Boston Housing Authority | 2,713 |
| CA | Housing Authority of the City & County of San Francisco | 2,471 |
| KY | Louisville Metro Housing Authority | 2,465 |
| OH | Cincinnati Metropolitan Housing Authority | 2,157 |
| CA | Housing Authority of the City of Los Angeles | 1,934 |
| OH | Cuyahoga Metropolitan Housing Authority | 1,890 |
| FL | Tampa Housing Authority | 1,852 |
| CA | Oakland Housing Authority | 1,850 |
| TX | San Antonio Housing Authority | 1,784 |
| OH | Greater Dayton Premier Management | 1,719 |
| CT | Housing Authority of the City of Hartford | 1,655 |
| AL | Housing Authority of the City of Montgomery | 1,561 |
| AL | Housing Authority of the Birmingham District | 1,560 |
| MA | Cambridge Housing Authority | 1,555 |
| FL | Miami Dade Public Housing and Community Dev | 1,541 |
| OR | Housing Authority of Portland | 1,253 |
| NJ | Housing Authority City of Jersey City | 1,222 |
| CA | San Diego Housing Commission | 1,220 |
| AL | Mobile Housing Authority | 1,192 |
| NJ | Paterson Housing Authority | 1,183 |
| VQ | Virgin Islands Housing Authority | 1,173 |
| WI | Housing Authority of the City of Milwaukee | 1,167 |
| CT | Housing Authority of the City of New Haven | 1,101 |
| TN | Chattanooga Housing Authority | 1,087 |
| NY | The Municipal Housing Authority City Yonkers | 1,082 |
| TN | Metropolitan Development & Housing Agency | 1,072 |
| DE | Wilmington Housing Authority | 1,032 |
| IL | Peoria Housing Authority | 1,021 |

For a complete listing see: https://www.hud.gov/sites/dfiles/PIH/documents/Faircloth_List_9-30-21_FINAL.xlsx



Exhibit B

PROJECT INFORMATION

Project Name: [Click here to enter text.](#)

Date Form Completed: [Click here to enter text.](#)

Developer: [Click here to enter text.](#)

Developer Project Manager / Main POC: [Click here to enter text.](#)

HUD Program Information

Add as many rows as necessary to include all sources of HUD assistance.

| Grant or Project Number | HUD Program (e.g. CDBG, 223(f) Refinance, Public Housing Capital Fund, RAD) |
|-------------------------|--|
| | |
| | |

Estimated Total HUD Funded, Assisted, or Insured Amount: [Click here to enter text.](#)

Estimated Total Project Cost (HUD and non-HUD funds): [Click here to enter text.](#)

Project Location:

Provide a street address or intersection for your project. Provide additional information on the project located beyond the address as necessary for the scope of the project in a narrative in the provided textbox. For example, any new construction and projects affecting a larger area may require more context than simply a street address. If the project affects a large area, such as an infrastructure or community services project, select a representative address and describe the project location.

[Click here to enter text.](#)

Description of the Proposed Project [24 CFR 50.12 & 58.32; 40 CFR 1508.25]:



*Provide a project description that captures the maximum anticipated scope of the proposal. It should include all contemplated actions which logically are, either geographically or functionally, a composite part of the project, regardless of the source of funding. Describe all physical aspects of the project, such as plans for multiple phases of development, size and number of buildings, and activities to be undertaken. Include details of the physical impacts of the project, including whether there will be ground disturbance. Identify the site's current owner(s). If applicable, indicate whether the project site will require acquisition or if AH or the development sponsor(s) already have ownership. **This language will be used in the public advertisement and in the request for release of funds to HUD.***

[Click here to enter text.](#)

Does this project involve over 200 lots, dwelling units, or beds?

- ☐ Yes
- ☐ No



ADDITIONAL QUESTIONS AND ATTACHMENTS

1. Is there an access agreement or has the owner provided some sort of written approval for AH's consultant to access the site? Otherwise, the owner must be present while the consultant conducts their site visit.

- ☐ Yes – Please attach.
- ☐ No
- ☐ Not Applicable – AH is the landowner

2. Is there a current Phase I ESA?

- ☐ Yes – Please attach.
- ☐ No – Please note when one will be made available.

3. Has a SHPO review been completed for the project?

- ☐ Yes – Please attach.
- ☐ No

4. If the development is a rehabilitation, is it “major” or “minor”? (Rehabilitation is “major” or “substantial” when the estimated cost of the work is 75 percent or more of the property value after rehabilitation.)

- ☐ Major
- ☐ Minor
- ☐ N/A – New Construction



5. Please attach all of the following:

- ☐ Existing conditions survey.
- ☐ Future site plans.



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MBE/WBE/SBE OPPORTUNITY INCLUSION POLICY (OIP)

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ARTICLE I: INTENT

It is the policy of The Housing Authority of the City of Atlanta, Georgia (AH) that there exist full and equal business opportunity for all persons and businesses seeking to do business with AH. It is in furtherance of equal opportunity in public contracting that AH is seeking to mitigate the present and ongoing effects of past and present discrimination against minority and women owned business and their employees. AH is committed to ensuring that it is not a passive participant in any lingering marketplace institutionalization of discrimination. Through the AH's Opportunity Inclusion Policy (OIP) Minority, Women and Small Business Enterprises (MBE/WBE/SBEs) as defined herein and certified by AH recognized certifying organizations, MBE/WBE/SBEs shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. AH will take all necessary and reasonable steps authorized by the Department of Housing and Urban Development (HUD) and promulgated in 2 CFR 200, The National Affordable Housing Act 42 U.S.C 12703, and HUD Procurement Handbook for Public Housing Agencies 7460.8 Rev.2. to ensure that MBE/WBE/SBEs shall have the maximum opportunity to compete for and perform contracts financed in whole or in part by federal funds.

This Policy will be incorporated into AH's Department of Procurement's procedure manual and into all of AH's solicitations and business partners' contracts.

Additionally, this Policy shall be implemented through AH's OIP via MBE/WBE/SBE Utilization Plans that are submitted by entities seeking to do business with AH or its partners who utilize federal funding in whole or in part. This OIP shall be incorporated by reference in its entirety and made a part of each and every Invitation-For-Bid (IFB), Request for Proposal (RFP), contract or similar procurement document issued or entered into by AH directly or indirectly via private property managers, developers or any other entity creating obligations to expend funds from or on behalf of AH.

ARTICLE II: BASIS

AH has evaluated the findings and declarations from an Atlanta Housing Commissioned Disparity Study and forms the basis for determinations with respect to its MBE/WBE/SBE program goals. The Disparity Study confirms that an AH program, of the scope and nature contemplated by Section 281 of the National Affordable Housing Act, must incorporate minority, women and small business outreach in all contracting activities.

AH by means of this OIP is seeking to build on AH's existing efforts to include small, minority and women owned business in its contracting. In AH's existing Administrative Operations Manual – Revised July 1, 2015 Section 16.3 AH did undertake "...affirmative steps and encouraged the use of women and minority-owned businesses (WBE and MBEs), businesses owned by economically disadvantaged persons and small businesses as contractors, subcontractors, consultants, and service providers." The AH Disparity Study confirmed the efforts yielded results but those results were not reproduced by AH's private management developers and developers.

The AH Disparity Study cites HUD's guidance on Procurement by Public Housing Authorities (PHAs). In a model procurement policy to PHAs HUD suggests that "Goals shall be established periodically for participation of small businesses, minority-owned businesses and Section 3 business concerns in prime contracts and subcontracting opportunities".

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ARTICLE III: GOALS

The AH will have an agency-wide goal to be determined annually of its spending through direct contract, contracts awarded by AH's Private Management Developers (PMDs) and Developers (Partners).

AH's Partners, PMDs and other AH contractors are subject to the following minimum goals:

- 35% participation goals for MBE/WBE

AH's not-for-profit/nonprofit contractors are subject to the following minimum goals for direct development opportunities:

- 20% participation goals for MBE/WBE

Respondents' compliance with AH's MBE/WBE/SBE commitment goals will be evaluated on the basis of a percentage of the total base bid or proposal. The MBE/WBE/SBE participation goals shall apply to the total dollar value of the contract, inclusive of all amendments, modifications and change orders. Respondents agree to comply with the MBE/WBE/SBE commitment goal in any contract modification work. AH's President and CEO is authorized to adjust the minimum goals periodically as he/she may determine is in the best interests of AH.

ARTICLE IV: ORDER OF PREFERENCE

Respondents shall, in determining the manner of MBE/WBE/SBE participation, consider the utilization of MBE/WBE/SBEs as joint venture partners, private managers, developers, prime contractors, subcontractors and/or suppliers of goods and services directly related to the performance of their contract. In all cases, AH requires that the respondent demonstrate the specific efforts undertaken to utilize MBE/WBE/SBEs directly in the performance of the contract.

Respondents that have exhausted efforts in identifying MBE/WBE/SBEs directly in the performance of their contract shall seek participation of MBE/WBE/SBE firms on Respondents performance of work indirectly related to Atlanta Housing contract where such participation not counted on another agency's MBE/WBE/SBE program goal.

ARTICLE V: COUNTING MBE/WBE/SBE PARTICIPATION

Counting MBE/WBE/SBE Participation: **Proposed MBE/WBE/SBEs must perform a commercially useful function** in order to be considered eligible for credit towards participation in AH's MBE/WBE/SBE program. A company is considered to perform a commercially useful function responsible for actually performing, managing, and supervising the work involved. To determine whether an MBE/WBE/SBE is performing a commercially useful function, AH will review and evaluate the specific duties that will be performed by the MBE/WBE/SBE. Each MBE/WBE/SBE will be expected to perform all of the work contemplated for it, in its area of certification, by any subcontract or agreement through the use of its own employees and equipment.

AH reserves the right to deny or limit MBE/WBE/SBE credit to the selected Contractor where any MBE/WBE/SBE is found to be engaged in substantial subcontracting or pass-through activities with others.

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Credit for the participation of MBE/WBE/SBE as joint ventures shall be based upon a detailed analysis of the duties, responsibilities and risks undertaken by the MBE/WBE/SBE specified by the joint venture's executed agreement. AH reserves the right to deny or limit MBE/WBE/SBE credit to the Respondent where any MBE/WBE/SBE joint venture partner is found to have duties, responsibilities, and risks of loss and management control over the joint venture that is not commensurate with or in proportion to its joint venture ownership.

ARTICLE VI: WAIVERS

If a Respondent is unable to meet the MBE/WBE/SBE participation commitment goals in its proposal for an AH contract, a written request for waiver of MBE/WBE/SBE participation commitment goals must be submitted as part of its submissions in response to an IFB or RFP. Contractors may achieve compliance by petition for grant of relief or waiver from AH's MBE/WBE/SBE commitment goals on the Respondent's letterhead, accompanied by documentation demonstrating that all reasonable "good faith" efforts were made toward fulfilling published goals.

Failure of a Respondent to carry out the commitments and policies with respect to MBE/WBE/SBEs shall constitute a material breach of contract and may result in the suspension or termination of a contract, the disqualification of the Respondent for a future award of AH contracts, the assessment of liquidated damages or such remedy as AH deems appropriate.

Compliance with AH's MBE/WBE/SBE participation commitment goals will not diminish or supplant Equal Employment Opportunity and Civil Rights provisions as specified elsewhere and as they relate to prime contractor and subcontractor obligations.

AH's Chief Executive Officer has the authority to waive MBE/WBE/SBE participation goals on contracts with a recommendation from the Contract Compliance Section and Purchasing and Contracts Department. This may occur whenever the Chief Executive Officer determines that for the reasons of time, need, or standards not previously known, that such a Waiver would be in AH's best interest.

ARTICLE VII: DEFINITIONS

- A. Area of Specialization – description of the MBE/WBE/SBEs business, which has been determined to be most reflective of the MBE/WBE/SBEs, claimed specialty or expertise. Each Letter of Certification contains a description of the MBE/WBE/SBEs area of specialty. AH reserves the right to investigate and determine active MBE/WBE/SBE participation specifically identified for this contract prior to award.
- B. Contractor – the individual or business entity selected by AH to (1) enter into contract negotiations with AH or (2) to receive an award of contract pursuant to an Invitation for Bid or Request for Proposal. Wherever the term Contractor appears, it shall also be construed to pertain to architects, engineers, consultants or other professional service providers as applicable.
- A. Small Business Enterprise (SBE) – Business that is at least 51% owned by a socially and economically disadvantaged individual(s) who also control it and meet the Small Business Administration's size standard and does not exceed existing gross receipt standards from certifying agencies.
- D. Joint Venture – (1) an association of two or more businesses acting as a contractor or as a

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subcontractor in carrying out all or a definite portion of a contract in which each combine its property, capital efforts, skills, and knowledge; or (2) an enterprise formed after the date of the first publication of AH's Invitations for Bids or Requests for Proposals to perform work on a contract, which if the enterprise were continuing, would qualify as an MBE/WBE/SBE.

- E. Joint Venture Agreement – a fully executed and notarized copy of the joint venture Agreement submitted with the bid by a joint venture. In order to demonstrate the MBE/WBE/SBE partner's share in the ownership, control, management responsibilities, risks in the profits of the joint venture, the proposed Joint Venture Agreement must contain specific details related to:

- Contributions of capital and equipment;
- Work responsibilities or other performance to be undertaken by the MBE/WBE/SBE company;
- Commitment of management, supervisory and operative personnel employed by the MBE/WBE/SBE to be dedicated to the performance of the contract; and
- Defining each partner's authority to contractually obligate the joint venture and each partner's authority to expend joint venture funds (e.g. check signing authority).

- F. Manufacturer – a company that operates or maintains a factory or establishment that produces, on premises, the materials or supplies obtained by a contractor.

- G. Minority Group – may include the following:

- Black/African American; or
- Asian Pacific American (persons with origins from Japan, China, Philippines, Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Islands, Northern Mariana Islands, Laos, Cambodia, Taiwan); or
- Native American (American Indian, Eskimos, Aleut or Native Hawaiians); or
- Subcontinent Asian Americans.

Ethnic Group

- Hispanic/Latino

- H. Minority Business Enterprise (MBE) – an independent business which performs a commercially useful function and which is 51% or more owned, controlled and operated on a day-to-day basis by one or more minority persons and is currently certified by an accredited agency or is in the process of being certified. Firms with pending MBE certifications may be submitted for MBE credit but will NOT count towards credit without a current letter of certification from an AH approved certifying agency.
- I. Participation Proposal – an affidavit attesting to the MBE/WBE/SBE subcontractors that will be utilized on a given contract, stating the name, address, telephone number of MBE/WBE/SBE subcontractor/supplier, dollar amount and percentage of participation and the scope of work to be performed.
- J. Regular Dealer – a company that owns or maintains a store, warehouse or other establishment in which materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be considered a regular dealer, the company must engage in, as its principal business and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum

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products need not keep such products in stock if it owns or operates distribution equipment.

- K. Women Business Enterprise (WBE) – an independent business which performs a commercially useful function and which is 51% or more owned, controlled and operated on a day-to-day basis by one or more women. Firms with pending WBE certifications may be submitted for WBE credit but will NOT count towards credit without a current letter of certification from an AH approved certifying entity.
- L. Utilization Plan – an affidavit attesting to the MBE/WBE/SBE subcontractors that will be utilized on a given contract stating the names, addresses and telephone numbers of the MBE/WBE/SBE subcontractors/suppliers. The Utilization Plan will also indicate the dollar amount, percentage of participation and the scope of work to be performed.

**ARTICLE VIII: MBE/WBE/SBE UTILIZATION PLAN GUIDELINES GOVERNING
SUBMISSION, EVALUATION AND APPROVAL**

Contractors interested in responding to AH, Partner or PMD issued solicitations for Request for Proposals, Invitations for Bid and requests for quotes must submit an MBE/WBE/SBE Utilization Plan or an affidavit acknowledging contract specific MBE/WBE/SBE goals and indicating their intent to comply. MBE/WBE/SBE Utilization Plans will be reviewed for completeness. Failure to submit a Utilization Plan or affidavit may cause a bid or proposal to be deemed unresponsive and that firm non-responsible.

MBE/WBE/SBE firms proposed for credit towards AH's participation goals must include a copy of the MBE/WBE/SBE's current letter(s) of certification from the City of Atlanta, MARTA, Fulton County, the State of Georgia Department of Transportation, the Minority Business Development Council, the Small Business Administration or from another AH approved certifying agency. AH reserves the right to decline to accept a certification from a certifying entity with insufficient standards or history of questionable certifications as determined by AH at its sole discretion.

All letters of certification must include a statement of the MBE/WBE/SBE's area of specialization, the date of issuance of the letter and the expiration or renewal date of certification and the agency, which should be signed by an authorized individual representing the certifying agency. The MBE/WBE/SBE's scope of work must conform to the area of specialization stated in the proposal/bid.

Any MBE/WBE/SBE with a principal place of business located outside of Atlanta Standard Metropolitan Statistical Area (SMSA) and/or the State of Georgia may participate in contracts let by AH. For an out of state MBE/WBE/SBE to be considered as a Respondent, a copy of a current letter of certification from a recognized local and/or out of state certifying agency must be submitted with the proposal bid. AH, reserves the right to decline to accept a certification from an accrediting entity with insufficient standards or history of questionable certifications as determined by AH at its sole discretion.

MBE/WBE/SBE firms listed on utilization forms for MBE/WBE/SBE credit towards AH goals, may NOT be substituted without a prior written request, properly supported with non-arbitrary or capricious rationale accompanied with a prior written approval from the AH or its Partners and PMDs.

In cases where the Respondent is requesting a waiver or variance of the MBE/WBE/SBE participation goals, the request must be submitted at the time of submission of the overall proposal. AH reserves the right to decline to accept a waiver from any contractor for insufficiently documenting efforts at complying with AH published goals. AH will take into account any request for waiver based on non-availability of

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MBE/WBE/SBE Firms when other bids or proposals are received that demonstrate feasibility.

ARTICLE IX: MBE/WBE/SBE UTILIZATION REPORTING

AH and its Partners, PMDs and other AH business partners shall conduct post-award monitoring throughout the term of the contract at such intervals that coincide with the submission of invoices, pay applications or a monthly report as agreed by contract and upon request from the AH or its Partners or PMDs. AH and its partners will perform regular reviews of compliance, conduct on-site site visits, conduct investigations of inappropriate or fraudulent use by or of MBE/WBE/SBE firms and review and act upon waivers, substitutions and modifications proposed by contractors after the contract has been awarded and executed.

During the terms of contracts, Contractors shall submit payment related data in an electronic format and/or format as requested by AH. As such, AH's Partners, PMDs and other AH business partners, submit regular status reports of MBE/WBE/SBE Subcontract Payments. The reports are to be submitted with each request for payment from AH or its Partners, PMDs and other AH business partners during the term of the contract. Failure to submit the status reports may result in payment delay and/or denial.

ARTICLE X: MBE/WBE/SBE SUBSTITUTIONS

Arbitrary changes by the Respondent or the Contractor of its commitment goals earlier certified in the Schedule A are prohibited. Furthermore, once entering into each approved MBE/WBE/SBE sub-agreement, the Contractor shall thereafter, neither terminate the sub-agreement, nor reduce the scope of the work to be performed by the MBE/WBE/SBE, nor decrease the price to the MBE/WBE/SBE without receiving prior written approval from AH.

In some cases, it may become necessary to substitute new MBE/WBE/SBE requirements. In such cases, AH must receive written rational justifying the release by AH of prior specific MBE/WBE/SBE commitments established in the Contractor's proposal or bid.

ARTICLE XI: NON-COMPLIANCE SANCTIONS AND LIQUIDATED DAMAGES

AH shall have the discretion to apply suitable remedies if Contractor is found to be in non-compliance with the MBE/WBE/SBE requirements. Failure to comply with the MBE/WBE/SBE terms of commitment goals as applicable to and in the contract or failure to use MBE/WBE/SBEs as stated in the selected Contractor's submitted schedules constitutes a material breach of the contract and may lead to the suspension and/or termination of the contract in whole or in part. Furthermore, continued eligibility to enter into future contracting arrangements with AH may be jeopardized as a result of non-compliance. In some cases, payments may be withheld until corrective action is taken.

Owing to the difficulty of determining the value of damages suffered by AH arising from the non-compliance by Contractors in the fulfillment of contractually required MBE/WBE/SBE commitments, where no waiver was sought or granted; AH will set out liquidated damages in its contracts and encourage its Partners, PMDs and other business partners utilizing federal funds to include similar contract remedies within their contracts.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 14, 75, 91, 92, 93, 135, 266, 570, 574, 576, 578, 905, 964, 983, and 1000

[Docket No. FR-6085-F-03]

RIN 2501-AD87

Enhancing and Streamlining the Implementation of Section 3 Requirements for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992 (Section 3), contributes to the establishment of stronger, more sustainable communities by ensuring that employment and other economic opportunities generated by Federal financial assistance for housing and community development programs are, to the greatest extent feasible, directed toward low- and very low-income persons, particularly those who receive government assistance for housing. In accordance with statutory authority, HUD is charged with the responsibility to implement and enforce Section 3. HUD's regulations implementing the requirements of Section 3 have not been updated since 1994 and are not as effective as HUD believes they could be. This final rule updates HUD's Section 3 regulations to create more effective incentives for employers to retain and invest in their low- and very low-income workers, streamline reporting requirements by aligning them with typical business practices, provide for program-specific oversight, and clarify the obligations of entities that are covered by Section 3. These changes will increase Section 3's impact for low- and very low-income persons, increase compliance with Section 3 requirements, and reduce regulatory burden.

DATES: *Effective Date:* November 30, 2020.

Compliance Dates: Public housing financial assistance recipients must implement their Section 3 activities pursuant to these regulations and comply with the reporting requirements starting with the recipient's first full fiscal year after July 1, 2021. These regulations are applicable to Section 3 projects for which assistance or funds are committed on or after July 1, 2021.

FOR FURTHER INFORMATION CONTACT: For questions, please contact the following people (the phone numbers are not toll-free):

For Public Housing Financial Assistance: Merrie Nichols-Dixon, Director, Office of Policy Program and Legislation, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW, Room 3178, Washington, DC 20410; telephone 202-402-4673 (not a toll-free number).

For Community Development Block Grant (CDBG)/CDBG Disaster Recovery/Section 108 Loan Guarantee Program: Jessie Handforth Kome, Director, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW, Room 7282, Washington, DC 20410; telephone 202-708-3587 (voice/TDD) (not a toll-free number).

For HOME or Housing Trust Fund Section 3 projects: Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW, Room 10168, Washington, DC 20410; telephone 202-402-4606 (not a toll-free number).

For Office of Housing programs: Thomas R. Davis, Director, Office of Recapitalization, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW, Room 6230, Washington, DC 20410; telephone 202-402-7549 (voice/TDD) (these are not toll-free numbers).

Persons with hearing or speech impairments may access this number through TTY by calling the Federal Relay Service, at toll-free, 800-877-8339. General email inquiries regarding Section 3 may be sent to: section3@hud.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 3 of the Housing and Urban Development Act of 1968 (Pub. L. 90-448, approved August 1, 1968) (Section 3) was enacted to bring economic opportunities generated by certain HUD financial assistance expenditures, to the greatest extent feasible, to low- and very low-income persons residing in communities where the financial assistance is expended. Section 3 recognizes that HUD funds are often one of the largest sources of Federal funds expended in low- and very low-income communities and, where such funds are spent on activities such as construction and rehabilitation of housing and other public facilities, the expenditure results

in economic opportunities. By directing HUD-funded economic opportunities to residents and businesses in the community where the funds are expended, the expenditure can have the dual benefit of creating new or rehabilitated housing and other facilities while providing opportunities for employment and training for the residents of these communities.

The Section 3 statute establishes priorities for employment and contracting for public housing programs and for other programs that provide housing and community development assistance. For example, the prioritization as it relates to public housing assistance places an emphasis on public housing residents, in contrast to the prioritization as it relates to housing and community development assistance, which places more emphasis on residents of the neighborhood or service area in which the investment is being made.

In the 25 years since HUD promulgated the current Section 3 regulations, significant legislation has been enacted that affects Section 3.¹ In addition, HUD has also heard from the public that there is a need for regulatory changes to clarify and simplify the existing requirements. HUD's experience in administering Section 3 over time has also provided insight as to how HUD could improve its Section 3 regulations. HUD, thus, concluded that regulatory changes were necessary to streamline Section 3 and more effectively benefit low- and very low-income persons through HUD financial assistance to achieve the Section 3 statute's purposes.

II. The Proposed Rule

HUD issued a proposed rule on April 4, 2019 (84 FR 13177) to update the existing regulations and streamline the Section 3 program.

Promote Sustained Employment and Career Development

The proposed rule included multiple elements designed to increase Section 3's impact in directing employment opportunities and sustaining employment for the people served by

¹ This legislation includes, but is not limited to, the following: Reforms made to HUD's Indian housing programs by the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (Pub. L. 104-330, approved October 26, 1996); public housing reforms made by the Quality Housing and Work Responsibility Act of 1998 (QHWRA) (Pub. L. 105-276, approved October 21, 1998); reforms made to HUD's supportive housing programs by the Section 202 Supportive Housing for the Elderly Act of 2010 (Pub. L. 111-372, approved January 4, 2011); and the Frank Melville Supportive Housing Investment Act of 2010 (Pub. L. 111-347, approved January 4, 2011).

HUD financial assistance programs. The rule proposed tracking and reporting labor hours instead of new hires. While the previous new hire framework was valuable for measuring entry into employment, the new hire framework did not capture the extent to which new hiring opportunities are created relative to the total work performed, nor whether those opportunities are sustained over time. The proposed rule's focus on labor hours sought to measure total actual employment and the proportion of the total employment performed by low- and very low-income workers. In addition, the change to labor hours emphasized continued employment. For example, the prior exclusive focus on counting new hires regarded five new hires for one-month opportunities as a more valued outcome than one 12-month opportunity, and it did not distinguish between full- and part-time employment. A full-time job sustained over a long period allows a low- or very low-income worker to gain skills and is a strong indicator of progress towards self-sufficiency. The new focus on labor hours would ensure that longer-term, full-time opportunities are appropriately recognized.

HUD's proposed rule also sought comment on maintaining the new hire framework for only Public Housing Agencies (PHAs). HUD held a number of listening sessions and heard from some PHAs that they would prefer to keep reporting new hires rather than switch to reporting labor hours. Therefore, while HUD believes tracking labor hours is the best option and would simplify reporting, HUD did seek comment on the alternative option of maintaining the new hires framework for PHAs.

Align Section 3 Reporting With Standard Business Practices

HUD also proposed tracking labor hours rather than new hires because it would be more consistent with business practices. Most construction contractors working on HUD assisted projects already track labor hours in their payroll systems because they pay their employees based on an hourly wage. In some cases, they are also subject to prevailing wage requirements.² HUD believes a consistent labor-hour tracking mechanism makes compliance with Section 3 easier not only for recipients of HUD assistance, but also for contractors and subcontractors. The proposed rule provided that for employers who do not track labor hours in detail through a time-and-attendance

system, such employers could provide a good faith assessment of the labor hours for a full- or part-time employee. However, if a time-and-attendance system is later implemented, the accurate labor hour accounting would be required.

Applicability and Thresholds

The Section 3 statute applies to both: (1) HUD's Public Housing Program, and (2) Other HUD programs that provide housing and community development assistance. For ease in administration for recipients using one or both of these HUD funding streams, the proposed rule provided definitions for these types of funding and specified Section 3 requirements for each type. The proposed rule included the following definitions for the scope of such financial assistance:

(1) Public housing financial assistance covers:

(a) Development assistance provided pursuant to Section 5 of the United States Housing Act of 1937 (the 1937 Act),

(b) operations and management assistance provided pursuant to Section 9(e) of the 1937 Act (Operating Fund), and

(c) development, modernization, and management assistance provided pursuant to Section 9(d) of the 1937 Act (Capital Fund); and

(2) Section 3 projects cover HUD program assistance used for housing rehabilitation, housing construction and other public construction projects that generally exceed a \$200,000 project threshold or any Section 3 project funding from HUD's Lead Hazard Control and Healthy Homes programs.

The proposed definitions defined the scope of programs subject to Section 3 requirements but did not expand such coverage beyond the compliance requirements of HUD's prior regulations. HUD proposed the \$200,000 threshold for housing rehabilitation, housing construction and other public construction projects because work below that amount would likely not trigger long-term employment opportunities for which the recipient could show measurable labor hours. The proposed rule also clarified that contracts, subcontracts, grants, or subgrants subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)) or subject to tribal preference requirements as authorized under Section 101(k) of the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4111(k)) must provide preferences in employment, training, and business

opportunities to Indians and Indian organizations.

Reporting and Targeted Section 3 Workers

The proposed rule aimed to align Section 3 reporting requirements more closely to the statutory priorities; HUD's previous regulation tracked only public housing residents or low- or very low-income persons who lived in the metropolitan area or nonmetropolitan county of the project, rather than whether the statutory priorities were met. The rule proposed a new definition of "Section 3 worker" as any worker or who meets at least one of the following criteria: Low- or very low-income, as established by HUD's income limits; living in a Qualified Census Tract (QCT); or employed by a Section 3 business concern.³

The proposed rule also included a new "Targeted Section 3 worker" definition so that HUD could track, and recipients could target, the hiring of Section 3 workers in selected categories. The Section 3 statute requires certain financial assistance recipients to prioritize their efforts to direct employment and economic opportunities to specific groups of low- and very low-income individuals. The "Targeted Section 3 worker" reflects both statutory and policy priorities that HUD wishes to specifically track. For public housing financial assistance, the proposed definition of a Targeted Section 3 worker was a Section 3 worker who is also:

(1) A worker employed by a Section 3 business concern; or

(2) A worker who is currently or who was when hired by the worker's current employer, a resident in a public housing project or Section 8-assisted housing; or

(3) A resident of other projects managed by the PHA that is expending assistance; or

(4) A current YouthBuild participant.

For other HUD assistance programs, the proposed priorities were:

(1) Residents within the service area or the neighborhood of the project, and

(2) YouthBuild participants.

³ Section 3 business concern means: (1) A business concern that meets one of the following criteria: (i) It is at least 51 percent owned by low- or very low-income persons; (ii) Over 75 percent of the labor hours performed for the business are performed by low- or very low-income persons; or (iii) It is a business at least 25 percent owned by current public housing residents or residents who currently live in Section 8-assisted housing. (2) The status of a Section 3 business concern shall not be negatively affected by a prior arrest or conviction of its owner(s) or employees. (3) Nothing in this part shall be construed to require the contracting or subcontracting of a Section 3 business concern. Section 3 business concerns are not exempt from meeting the specifications of the contract.

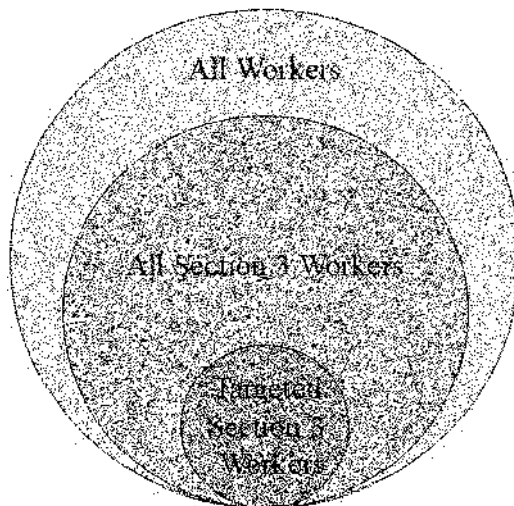
² See 42 U.S.C. 1437j(a), 24 CFR 905.308(b)(3)(ii), 24 CFR 965.101, 25 U.S.C. 4225(b)(1)(A), and 24 CFR 1006.345(b).

There is also a statutory contracting priority for businesses that provide economic opportunities for low- and very low-income workers. Therefore, HUD proposed including labor hours worked by the Section 3 business concern employees for both Section 3

workers and Targeted Section 3 workers. HUD also proposed a new Section 3 business concern definition that reflected the change to labor hours and increased the threshold of work performed by a business by low- and very low-income workers given the

proposed rule's inclusion of all Section 3 business concerns' labor hours in the definition of both Section 3 workers and Targeted Section 3 workers.

The proposed rule created the following construct for measuring workers:



Benchmarks

The proposed rule provided that a new Section 3 benchmark measurement would serve as a safe harbor for those recipients that meet the new benchmark. The primary objective of the proposed rule was to reflect and monitor grantees' abilities to direct job opportunities that are generated by HUD financial assistance to Section 3 workers and Targeted Section 3 workers. The proposal included using benchmarks based on ratios of Section 3 workers and Targeted Section 3 workers in comparison to all workers. HUD proposed that the benchmarks would be set by **Federal Register** Notice and amended periodically to provide for updating of the benchmarks to align with the reporting data HUD received. As HUD gathers more data under the new rule, HUD could increase or decrease benchmark figures over time, or tailor different benchmarks for different geographies and different funding types. If a recipient certifies compliance with the statutory priorities and meets the outcome benchmarks, HUD will presume the recipient is complying with Section 3 requirements, absent evidence to the contrary. Recipients are still required to report their outcomes, and HUD will monitor them accordingly through the data reporting methods used to oversee all other program requirements in each applicable program area. Otherwise, recipients would be required to submit

qualitative reports on their efforts, as they are required to do under HUD's previous rule when they do not meet the safe harbor, and HUD may conduct monitoring to review the recipient's compliance, again consistent with practices used to monitor program participants' compliance with other program requirements.

The proposed rule also provided a burden relieving measure for PHAs with fewer than 250 units. For these PHAs, they would only be required to report on Section 3 qualitative efforts and would not need to track labor hours for Section 3 workers and Targeted Section 3 workers.

Multiple Funding Sources

The proposed rule created a new section for housing rehabilitation, housing construction, or other public construction projects assisted with funds from more than one HUD program. Specifically, the proposed rule provided that when a Section 3 project is funded by public housing financial assistance, the public housing financial assistance must be tracked and reported consistent with the public housing financial assistance requirements in subpart B, while the community development financial assistance may follow the requirements in subpart B or subpart C. The proposed rule directed that when a Section 3 project receives housing and community development assistance from two different HUD programs, HUD would designate

guidance through a single reporting office.

Integrate Section 3 Into Program Enforcement

Since HUD program office staff are regularly in touch with HUD's funding recipients on other compliance requirements, HUD proposed that program offices incorporate Section 3 compliance and oversight into regular program oversight and make Section 3 an integral part of the program's oversight work. The proposed rule also streamlined the complaint and compliance process to make Section 3 compliance consistent with existing practices for other requirements. The proposed rule shifted the delegation of authority for Section 3 enforcement and compliance responsibilities from the Assistant Secretary for Fair Housing and Equal Opportunity to reside with each of the applicable HUD program offices.

III. Changes Made at the Final Rule Stage

After review and consideration of the public comments and upon HUD's further consideration of Section 3 and the issues raised in the proposed rule, HUD has adopted the proposed rule as final with a few changes in this final rule. HUD also made minor edits to clarify the rule's language. The following highlights the substantive changes made by HUD in this final rule from the proposed rule.

Removing Alternative 2 for New Hires

After considering the data, Section 3's statutory goals, and the public comments, HUD is not retaining the tracking of new hires for PHAs, but instead requiring tracking of labor hours for all Section 3 outcomes. HUD agrees with commenters that it is in the best interest of the communities served by HUD to implement a more impactful Section 3 standard across all HUD-funded programs. Using different metrics for different programs would unnecessarily further complicate Section 3 reporting. Tracking labor hours is meant to ensure that Section 3 workers have sustained employment and career opportunities. HUD believes that the use of new hires provides an incomplete measure of the employment and local contracting opportunities available to low- and very low-income persons envisioned by the Section 3 statute. HUD expects the labor hour data to present a more accurate assessment of Section 3's impact. The focus on labor hours will measure total actual employment and the proportion of the total employment performed by low- and very low-income workers, which will mitigate contractors' ability to manipulate their Section 3 outcomes.

Section 3 Project Threshold

HUD received many public comments on proposed changes to the Section 3 Project threshold. HUD still considers the \$200,000 threshold for Section 3 projects appropriate given the percentage of projects that will continue to be covered and are likely to result in opportunities for employment of low- and very low-income workers when expended on construction-related activities. However, in response to public comments, HUD is providing that in this final rule, the Secretary may adjust the threshold, through a **Federal Register** Notice subject to public comment, in order to ensure Section 3 compliance. HUD's proposed rule already provided for the Secretary to update the threshold not less than once every five years based on a national construction cost inflation factor; the final rule now provides that the Secretary updates the benchmarks not less frequently than once every three years. HUD believes adding this flexibility is responsive to the comments received by the public. HUD will continue to work with program participants to adjust the thresholds accordingly, if necessary, based on the updated data provided under this final rule.

Setting a Project Threshold for Lead Hazard Control Grants

HUD also received comments regarding the exclusion of projects under HUD's Lead Hazard Control and Healthy Homes program from the \$200,000 project threshold. Lead hazard control projects are generally smaller, so many commenters suggested a lower threshold for such projects. On the other hand, other commenters noted that not including a threshold for lead hazard control grants altogether may incidentally include small grants that should not be subject to Section 3. For example, some Lead and Healthy Homes Technical Studies grants study the health effects of installed housing components in projects typically smaller than \$100,000. As expected, they did not result in opportunities for employment of Section 3 workers under the previous regulations. At the final rule stage, HUD is therefore adopting a \$100,000 project threshold for all projects that receive funding from HUD's Lead Hazard Control and Healthy Homes programs. HUD adopted this number to match the contract threshold in the previous regulations (see previous 24 CFR 135.3(a)(3)).

Removing the Qualified Census Tract Definition

After considering Section 3's statutory goals and the public comments, HUD is removing the QCT definition from this final rule. The addition of this criteria was to encourage hiring in the QCT and to make targeted hiring easier, but HUD recognizes that the inclusion of workers in these areas could inadvertently include individuals who are not low- or very low-income. Rather than the broad QCT definition, HUD is limiting the Section 3 worker definition to be more consistent with the statute, which requires prioritization of low- and very low-income workers and YouthBuild participants. This should also alleviate any potential burden on participants associated with the QCT designation.

Changing the Section 3 Business Concern Definition

In adopting the proposed definition of Section 3 business concern in this final rule, HUD is maintaining the over 75 percent of the labor hours performed for the business on construction are performed by low- or very low-income persons standard, but adding in that such performance must be over the last three-month period to help businesses determine whether or not they meet the criteria. HUD is also maintaining a separate criterion for businesses owned and controlled by current public

housing residents or residents who currently live in Section 8-assisted housing, but increasing the required percentage of owned and controlled to 51%. This change is in response to public comments and to maintain consistency with HUD's public housing regulations on contracting with resident-owned businesses at 24 CFR part 963. HUD also added a change to the documentation timing in paragraph (1) of the Section 3 business concern definition to allow a six-month grace period. HUD understands that businesses need time when bidding on contracts and prior to the contract's execution to assemble materials and to assess labor hours. This change is responsive to commenters who expressed concerns about Section 3 status retention, since labor hours can be dependent on the number of contracts on which a business bids and receives.

Changing the Professional Services Definition

In this final rule, HUD is amending the professional services definition to clarify that only non-construction services that require an advanced degree or professional licensing, rather than all non-construction services, are excluded from Section 3. HUD wants to ensure this final rule's emphasis encapsulates the statutory requirement to prioritize low- and very low-income workers, and provides this category of exempted workers from reporting given the challenge to hire low- and very low-income workers in jobs that require such degrees and licensing.

Counting Labor Hours for 5 Years

HUD's proposed rule provided that labor hours for Section 3 workers and Targeted Section 3 workers could be counted as long as the worker met the definition of a Section 3 worker or Targeted Section 3 worker at the time of hire. Based on public comments and further consideration, HUD agrees that a worker whose income has risen should only be counted for Section 3 purposes for a limited time period. HUD wants to ensure employers are invested in keeping Section 3 workers employed, and that there is enough opportunity to build skills and experience so that Section 3 workers may develop self-sufficiency and compete for other jobs in the future. Therefore, HUD provides that for purposes of reporting the labor hours for Section 3 workers and Targeted Section 3 workers, an employer may choose whether the workers are defined as Section 3 workers for a five-year period at the time of the workers' hire, or when the

workers are first certified as meeting the Section 3 worker definition.

Delayed Effective Date

The rule provides for a delayed transition to labor hours and the associated recordkeeping requirements. HUD recognizes that employers and grantees will need time to transition their systems and reporting practices as a result of this final rule. HUD is mindful of the need to update policies and procedures for planning purposes, and the importance of implementing the rule such that employers will be able to comply. Therefore, HUD has provided for a transition period through at least July 1, 2021. During this transition period, HUD expects that employers and grantees will begin following this final rule's requirements for new grants, commitments, and contracts. The exact date on which any particular recipient of HUD funding will be able to implement the conversion to the new requirements will vary during this transition period, but the transition must be complete by July 1, 2021. The reporting requirements and labor hours tracking will not begin until the dates for each entity specified in the "Compliance Date" section above.

IV. Discussion of Public Comments and HUD's Responses

The public comment period on the proposed rule closed on June 3, 2019, and HUD received 163 public comments. The comments came from state and city government agencies and housing administrations, housing authorities, non-profits, independent consultants, private citizens, housing authority directors, small businesses, the construction industry, and housing authority associations. The following presents the significant issues and questions related to the proposed rule raised by the commenters, and HUD's responses to these issues and questions. HUD would like to thank all the commenters for their thoughtful responses.

"Best Efforts" and "Greatest Extent Feasible"

In the proposed rule, HUD included a specific question for public comment regarding these statutory terms. Some commenters suggested the terms are interchangeable. One commenter suggested that HUD use the term "reasonable best efforts" for CDBG and HOME recipients and remove the term "greatest extent feasible" from the Section 3 regulations or use only "best efforts." Other commenters argued that these words are key to the intent of the statute, which is to provide recipients

leeway when constraints outside their control impede implementation, and recommended that HUD provide guidance materials on how to show best efforts when organizations do not meet their Section 3 goals, such as data collection forms which would indicate best efforts or non-exclusive lists of examples of "best efforts" and "greatest extent feasible."

In contrast, some commenters suggested that these terms are not interchangeable. One commenter said that "best efforts" should be measured by tracking outreach and outcomes of outreach and "greatest extent feasible" is the result of "best efforts." Another commenter argued that "best efforts" can be more clearly defined than "greatest extent feasible," as specific actions can demonstrate efforts, while feasibility is a more passive analysis of what is possible. One commenter argued that the "greatest extent feasible" is a much more rigid and prescriptive standard than the "best efforts" standard and noted that courts have found that the "best efforts" requirement "specifically avoids creating a mandatory obligation on the part of the agencies the statute affects." This "best efforts" standard likewise "does not call for perfect compliance." This commenter encouraged HUD to allow PHAs to retain greater discretion over the development of their own Section 3 programs.

A commenter suggested that Subpart B participants should continue to use "best efforts" while Subpart C participants should use "greatest extent feasible," and agencies receiving funding that triggers compliance under Subparts B and C should use the "best efforts" standard. One commenter suggested using the term "best efforts" to comply with employment, contracting and training opportunities.

Commenters also urged HUD to enforce the terms "best efforts" and "greatest extent possible," suggesting that whatever the standard, if an activity by a recipient, contractor or subcontractor does not adequately serve to hire, train, and retain a Section 3 worker, then it should not meet the standard. These commenters provided an example of a PHA's best effort. Commenters noted that while the recipient or contractor appears to meet the Section 3 goal, or at least made "best efforts" to reach the goal, in practicality such effort is not workable.

One commenter wrote that the terms without any definition are too broad and should be defined to assist in compliance with Section 3. Another commenter proposed that HUD should define the terms by how they will be

measured; for instance, that "best efforts" could be determined by a specific set of metrics around recruitment efforts and the percentage of Section 3 workers in the area. One commenter suggested a way to draft the rule using dollars spent to track compliance such that these terms would not be necessary.

Other commenters requested that HUD not define these terms or should not restrictively define these terms because HUD should trust the judgment and common sense of its professional field staff to determine compliance, because documenting compliance according to specific definitions could create additional administrative burden, because there are constraints outside the grantee's control, and because guidelines may stifle innovation.

HUD Response: HUD appreciates commenters' responses to the specific question regarding "best efforts" and "greatest extent feasible" in the proposed rule. "Best efforts" and "greatest extent feasible" are statutory terms, used in the statute in different contexts. As such, HUD will continue to use both terms to track compliance. HUD agrees with commenters that there are many ways to interpret the language. Traditionally, HUD has used the terms interchangeably, as referenced in the statute, and will continue to be consistent with the statutory language. See 12 U.S.C. 1701u(b)–(d). HUD also agrees with commenters who noted these terms are integral to the statutory intent and provide flexibility, rather than administrative burden, to grantees or recipients.

HUD notes that some perceive "best efforts" to be the more rigorous standard, while others perceive "greatest extent feasible" to be the more rigorous standard. HUD has determined not to define the difference between these two terms, but rather to increase the emphasis on outcomes as a result of these efforts. A recipient's reported results will be compared to the outcome metrics defined in the benchmark Notice. HUD program staff will evaluate the level of effort expended by those recipients that fail to meet the benchmark safe harbor, and thus will ensure that the statutory terms are being properly enforced. HUD included a list of examples in the regulation at §§ 75.15 and 75.25, including engagement in outreach efforts to generate job applicants who are Targeted Section 3 workers, providing training or apprenticeship opportunities, and providing technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).

Move to Labor Hours

Support for Using “Labor Hours”

Many commenters supported the shift to labor hours and, notwithstanding the alternatives presented in the proposed rule for PHAs, encouraged HUD to do the same for public housing construction, modernization, and similar work. These commenters stated that the “new hire” loophole should be eliminated for both housing and community development and public housing projects. Commenters stated that, in practice, contractors have only brought on new hires for short periods of time; the shift to labor hours will promote longer term employment. Commenters also stated that the shift to labor hours would solve the problem of contractors using dishonest practices to meet benchmarks, such as hiring Section 3 residents to fill the 30% benchmark only to lay them off shortly thereafter, or employing Section 3 hires for less than 20 hours a week. Commenters stated that allowing PHAs and their contractors to use “new hires” could provide a loophole to PHAs, allowing them to hire Section 3 workers for a limited or short time frame in order to comply with the regulation. Short-term employment does not allow residents to obtain technical skills, knowledge, or adequate savings. PHAs should be required to use labor hours worked because they can evade Section 3 compliance through manipulative hiring practices.

Commenters stated that the “labor hours” standard is far more effective, less susceptible to manipulation and administratively easier to verify. Commenters stated that the new hire standard is vulnerable to manipulation, because any contractor or subcontractor that performs work on more than one project at a time can easily avoid Section 3 hiring responsibilities by placing their new hires on non-Section 3 covered projects. Commenters asserted the new hire standard may be the single greatest barrier to achieving the employment potential of Section 3.

HUD Response: HUD agrees that counting new hires can be problematic and that collecting labor hours can be a more effective measure. As stated in the proposed rule, HUD believes that counting labor hours is consistent with the statute and mitigates contractors’ ability to manipulate their Section 3 outcomes. HUD has adopted the suggestion by the commenters and in the final rule applies the labor hour requirements to both housing and community development and public housing projects.

Support for Using New Hires

Many commenters supported retaining the new hires metrics. Commenters stated that tracking by labor hours is burdensome, will increase administrative costs, and will not streamline the Section 3 reporting requirements. One commenter refuted HUD’s hypothesis articulated in the proposed rule and stated that a labor hours metric is unlikely to capture the data on sustained employment opportunities that HUD is seeking. Another commenter stated that the proposed labor hours metric would decrease the number of firms willing to bid on contracts, increase the cost of public contracting for both the PHA and contractors, and provide no appreciable increase in Section 3 workers. Commenters stated that HUD should continue to track compliance by new hires for both Subparts B and C.

One commenter stated that labor hours should only apply to projects that already require the collection of certified payrolls as part of Davis Bacon compliance. Another commenter recommended HUD look to existing programs such as the Department of Transportation’s Disadvantaged Business Enterprises for guidance to make substantive changes to Section 3.

Commenters stated that the changes will generate additional administrative burdens. Commenters especially emphasized the potential impact on the Housing Trust Fund (HTF) program and state CDBG and HOME program implementation because states, particularly small and rural community sub-grantees, have limited capacity. Commenters recommended HUD give State CDBG programs a similar alternative to the one offered to PHAs in § 75.15(d). Another commenter proposed HUD allow State CDBG programs to use a good faith assessment of hours, stating that § 75.25(a)(4) will help but will not eliminate the difficulty for State CDBG programs. Another commenter specifically referenced HOME funding and the HTF regulations, noting that stated HTF regulations do not trigger Davis-Bacon and it is rare for a HOME-funded project to trigger Davis-Bacon and prevailing wage requirements.

Commenters stated that HUD’s assumption that labor hours are already tracked by most contractors and subcontractors to comply with the prevailing wage requirement is false. Commenters specifically noted that not all CDBG programs are subject to such requirements. One commenter wrote that even a small maintenance contract could result in 6 extra work hours for

staff charged with ensuring correct payroll entries and compliance, stating that a current contract that does not track labor hours would have an increase of approximately \$606,000 of federal funding required to administer the contracts, an additional 5% of costs. Another commenter stated that the proposed shift to labor hours will create an estimated 110 hours of additional administrative effort for the commenter per construction project, and will not impact the duration of Section 3 worker employment or allow HUD to better determine if long-term employment opportunities are generated. One commenter stated that tracking labor hours would require city contractors and subcontractors to track project labor hours using LCPTracker as the city does, necessitating increased administrative staff and resulting in higher contract amounts. One commenter stated that payrolls required for Davis-Bacon compliance are often submitted in hard copy, so compliance with the shift to labor hours would require manual data entry, a significant added labor-intensive task. Commenters also stated that many contractors are small business owners who do not have payroll software and many housing authorities do not have sufficient staff to track hours worked on all projects. Commenters also noted that many medium and smaller sized PHAs do not use LCPTracker and instead rely on contractor payrolls to monitor Davis-Bacon and Section 3. Other commenters stated that tracking hours could be more burdensome than tracking new hires, because new hires are only reported once. Tracking the workers’ hours necessitates verifying each Section 3 employee each week for the duration of their employment.

HUD Response: HUD carefully considered the diverse public comments on the use of labor hours versus retaining new hires as the measurement for assessing compliance with Section 3 requirements. HUD believes that the use of new hires provides an incomplete measure of the economic opportunities available to low and very low-income persons envisioned by the Section 3 statute. HUD believes that moving to the labor hours metric provides a more robust measure of how Section 3 is intended to work and mitigates contractors’ ability to manipulate Section 3 outcomes. HUD concluded the benefits of the labor hours approach outweighs the marginal cost that would result from this shift. HUD has determined that, while public commenters have concerns about possible burdens that result from the

proposed transition to recording labor hours instead of new hires, it is in the best interest of the communities served by HUD to implement a more impactful Section 3 standard across all HUD-funded programs. The use of labor hours is intended to ensure that recipients of these program funds are fully in compliance with the intent of Section 3—maximizing the economic opportunities arising from Federally funded activities that are available to low- and very low-income persons, including those who reside in public housing.

HUD also notes that the comments revealed a diversity of understanding with respect to HUD's record-keeping expectations in measuring the labor hours metric. HUD does not anticipate the level of detail in record-keeping that is required under the Davis-Bacon prevailing wage framework for purposes of Section 3. The proposed rule does not require prevailing-wage-style payroll reports. HUD does anticipate that either employers have some form of time and attendance system, particularly where employment uses an hourly wage structure, or that employers have salaried staff. The final rule does not require any change in these systems, nor necessitate any software approach to tracking payroll. Those employers that use a time and attendance system to track hourly wages may rely on that data, while the final rule provides a good faith reporting exception which applies to all entities that do not have an existing time and attendance system. The final rule has been modified in an effort to clarify that the good faith exemption applies to all Section 3 reporting entities (not only contractors and subcontractors) and that data from any existing salary-based or time-and-attendance-based payroll records can be used in good faith reporting under Section 3. HUD is mindful of the need to update policies and procedures for planning purposes, and the importance of implementing the rule such that employers will be able to comply. Therefore, HUD has provided for a transition period and a bifurcated compliance date. Public housing financial assistance recipients must comply with the reporting requirements starting with the recipient's first full fiscal year after this final rule's effective date. Section 3 project recipients must comply with the reporting requirements starting with the recipient's first full program year for projects committed or awarded after this final rule's effective date.

Many Section 3 Positions Are Short-Term in Nature

One commenter stated that many of the jobs made available under Section 3 requirements are short term positions specific to the needs of the individual project and/or worksite. These positions provide opportunities for the target population of low-skilled workers to build work experience (leading to possible economic advancement) while helping ensure project costs remain reasonable. Another commenter stated that the Section 3 goal leading to long-term employment and career advancement is unrealistic, as most opportunities generated by Section 3 projects are construction-related and therefore seasonal or project-based; it would be burdensome and complicated to track via labor hours long-term employment that results from a Section 3 worker being hired on a subsequent Section 3 project by a different contractor. Contractors do not keep pools of long-term general laborers on hand for consecutive projects as a means of employing Section 3 workers. Other commenters stated that nothing in the statute states that long-term employment through public housing or other housing and community development funding is the goal of Section 3; the statutory intent is to provide employment and training opportunities to residents of low-income communities where Federal housing and community development dollars are being spent, and tracking new hires better meets this intent.

Similarly, commenters stated Section 3 workers are more likely to assist in temporary work for PHAs. Using new hires better fits with this economic reality. One commenter stated that contractors do not reduce the number of part-time employees so they can provide full-time, long-term employment to fewer Section 3 workers. Other commenters stated that the nature of the construction industry is episodic; workers are not employed by one company for long periods of time, but from project to project, and workers often move from one company to another. The number of hours that a specific person works is generally based on what is required for the project and the type of work they are doing. Commenters asserted it is unreasonable to think that hours for lower-skilled employees will dramatically be increased for a specific construction project by moving to a "labor hours" standard.

Commenters also stated that the move to labor hours will confuse contractors and create more complexity. Another

commenter anticipated pushback from contractors declining to bid, which can lead to an increase in the cost of developing affordable housing. Commenters stated that tracking labor hours could provide contractors with an incentive to hire fewer low-income residents by employing those hired for a greater number of hours. This would have a negative effect on the number of low-income residents hired overall.

HUD Response: HUD recognizes that many Section 3 opportunities are short-term employment opportunities. The shift from measuring new hires to measuring labor hours continues to value these short-term opportunities as creating significant economic opportunities for low- and very-low-income workers, and these short-term opportunities will likely remain a primary source of Section 3 opportunities. At the same time, the shift in metrics more accurately reflects the nature and extent of these employment opportunities and places greater relative weight on those opportunities which do provide long-term career ladders and sustained employment opportunities.

There is no obligation on a reporting employer to track an employee's work beyond the immediate short-term seasonal or project-based employment. The opportunity to track an employee over time is solely an opportunity which can be seized by those reporting employers who have invested the extra time and effort to nurture an employee over time. That extra effort to develop a career track is not recognized by the previous new hire metrics but is recognized in the labor hour metrics. It should be noted, however, that the use of the labor hour metric to reward retention applies only to the relationship with the current employer. (See § 75.11(a)(2) "A worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years . . .") This provides an option for employers to look back to the worker's status at the time of original employment but does not require that an employer do so if the employer only wants to reference the employee's current status. Contrary to the concept referenced in the comments, there is no ability to claim long-term employment when hired on a subsequent Section 3 project by a different contractor.

This rule updates HUD's Section 3 regulations to create more effective incentives for employers to retain and invest in low- and very low-income workers. It is HUD's opinion that the change from new hires to labor hours, in combination with the opportunity to

provide good faith assessments, is consistent with businesses' existing payroll systems. Finally, HUD is of the opinion that this change will better advance the goal of sustained employment and career opportunities for low- and very low-income workers.

Alternatives

Several commenters suggested alternative frameworks for measuring Section 3 results, in some cases using the labor hours metric and/or the new hire metric already articulated in the current and proposed rules and in some cases proposing new alternative metrics entirely.

Some commenters recommended including definitions for both Alternative 1 and Alternative 2 so that agencies may exercise whichever option best suits their local circumstances. One commenter recommended using the \$200,000 project threshold or \$400,000 recipient threshold to determine whether labor hours or new hires should be the appropriate reporting metric, as larger projects have greater potential to create long term employment opportunities. One commenter focused on the safe harbor benchmark, stating PHAs should have the choice of labor hours at 10% or new hires at 30%. A commenter stated that if labor hours is adopted, all recipients and subrecipients should have the same flexibility allowed to PHAs.

Another commenter stated that "labor hours worked" should be used in conjunction with "30% new hires." The commenter wrote that many PHAs do not track the generated new hires metric making the current 30% of new hires mandate irrelevant—some PHAs allow contractors and subcontractors to select how many hires they will take onto a project despite it coming short of the 30% benchmark. The commenter wrote that tracking both "labor hours worked" along with the "30% new hires" provides further assurance that a recipient's contractors and subcontractors do not avoid their responsibilities to pay the prevailing wage in accordance with the Davis Bacon Act.

Other commenters argued neither labor hours worked, nor number of new hires are accurate metrics for Section 3 compliance and impact, where the goal of Section 3 is sustained economic independence and economic enhancement for Section 3 workers in and around HUD's investment areas. Commenters suggested compliance should instead be measured by: (1) Payroll dollars paid to Section 3 employees; (2) training dollars spent training Section 3 workers; and (3)

contract dollars paid to Section 3 contractors. Commenters further asserted tracking employment status would be unnecessary if all Section 3 employment payroll dollars were captured as a percentage of gross payroll dollars instead. Another commenter stated that an alternate suggestion would be to delineate Section 3 workers as full-time or part-time, and that tracking hours by using these two categories would be effective while still giving HUD information about the hours being completed by each worker. One commenter recommended Alternative 2, which continues to track new hires with the addition of Targeted Section 3 workers.

One commenter stated that transparency is needed, and the new revisions of Section 3 should include that contractors and subcontractors must make public the total amount of workers expected to complete a construction project.

Commenters proposed a third alternative to the two proposed, which is to stay with the current existing Section 3 goals, for both new hires (30% of new hires) and for contracting with Section 3 business concerns (10% of construction dollars and 3% of other dollars). Changes to what is already understood by contractors will be administratively burdensome and will require additional education and training for contractors and subcontractors.

HUD Response: HUD appreciates the alternatives suggested and has considered the various comments regarding the alternatives presented in the proposed rule and the modifications to those alternatives presented in the comments. HUD has concluded that both the use of Alternative 2 (New Hires) and the use of a hybrid drawing from both Alternative 1 and Alternative 2 provide an incomplete measure of employment opportunities generated through Section 3. Therefore, HUD decided not to retain the new hire standard. Rather than apply new hires recordkeeping to some programs and labor hours to others, HUD believes it is more efficient and effective for purposes of HUD's objectives with respect to Section 3 to apply the same standard across the board. HUD has determined to align Section 3 reporting requirements with typical payroll business practices by tracking labor hours (whether based on prevailing wage data, non-prevailing wage time-and-attendance system data, good faith assessments of hourly workers not tracked through a data system, or good faith assessments of salaried employees). While commenters varied

on whether tracking Section 3 outcomes through labor hours will be easier for recipients of HUD funding, HUD has concluded that the consistent labor hours metric more accurately reflects the impact of Section 3 and the economic development opportunities created. With respect to the alternatives regarding aggregate payroll tracking or tracking full-time and part-time positions, HUD believes that tracking of labor hours will adequately show hours worked. HUD has determined that tracking of training will be done qualitatively when appropriate.

Process for Tracking Labor Hours

Commenters stated that while they appreciated the idea of streamlining the metric, tracking new hires vs. hours may be a disincentive to developers if the tracking is more onerous or complicated than the current method. If tracking labor hours is a goal similar to Davis Bacon, then the process should be fully integrated with the Davis Bacon procedure including the duration of tracking (only until project completion), reporting requirements, and procedures. Commenters stated that ascertaining whether an employer has any new hires is not a simple task; it involves (1) reviewing pre-award payroll records to determine who was on the employee's payroll at the time of contract award and (2) reviewing ongoing payroll records for the duration of the contract to determine whether any new employees have been hired. Commenters also stated that it makes no sense to apply the "labor hours" standard to only one type of construction and rehabilitation project but not to another, based solely on the type of HUD funds involved. If a contractor employs no Section 3 workers, there should be no requirement to provide the data.

Commenters stated inexpensive software is available that enables contractors to submit electronic payroll reports and allows PHAs and other Section 3 funding recipients to easily determine the hours worked on the project, in each trade, by all workers and by Section 3 residents. Commenters noted such software is available to recipients of housing and community development assistance and also to PHAs and other public housing financial assistance recipients. Commenters stated that commonly used Contract Management and Payroll systems such as LCPTracker and B2GNow have features that align with compliance practices and make monitoring more effective. One commenter stated that HUD could provide appropriate software to all

agencies to assist them in tracking and reporting labor hours. A commenter noted that its city has a Federal labor standard software tracker which only 21% of contractors use, and this rule would require 100% of contractors to use the software, resulting in increased administrative work, contract costs, and system management.

One commenter noted that it would be easier to track labor hours with LCPTracker software if the reporting were more aligned with Davis-Bacon reporting. Commenters also saw potential in the hourly tracking if there were a way to eliminate double paperwork by adding Section 3 reporting to the existing Davis-Bacon worksheets. On the other hand, when Davis-Bacon does not apply to a Section 3 project, some commenters felt the administrative burden of tracking hours could be higher. More information would be needed about how the reporting requirements would be implemented before it could be definitively agreed that tracking hours is less burdensome than tracking new hires.

HUD Response: HUD recognizes the diversity of views on whether tracking labor hours would be less burdensome for organizations obligated to report Section 3 results. Based on the comments, HUD has concluded that it is likely to be less burdensome to track labor hours in many circumstances, and HUD has clarified the applicability of the good faith exemption to mitigate any potential burden for those who do not have payroll systems which would align to a labor-hours reporting metric. For those efforts subject to Davis Bacon requirements, which includes many HUD-funded construction endeavors, tracking labor hours consistent with existing tracking for prevailing wage requirements would almost certainly reduce burden on recipients. HUD is aware that there are existing software options that have the potential for capturing total labor hours and labor hours contributed by Section 3 workers. HUD also is exploring whether and how to operationalize and integrate HUD's Section 3 Performance Evaluation and Registry System (SPEARS) with outside software vendors. The SPEARS system already has optional data fields to capture the Aggregate Number of Staff Hours Worked and Total Staff Hours Worked by Section 3 Employees, and the system will be modified to align with the final rule. Underlying these considerations, however, is HUD's belief, as described above, that tracking labor hours will better allow HUD to determine if long-term employment opportunities are being generated, and

that the metric should be consistent without regard to the identity of the recipient of HUD funds. Unlike a labor hours measure, the new hire measure does not consider the share of actual work done by low- and very low-income workers, and new Section 3 hires may not be given the opportunity to work a substantial number of hours.

Labor Hours Based on Good Faith Assessment

One commenter stated that the proposed new rule allows for recipients to rely on a contractor's "good faith assessment" of labor hours (rather than payroll reports) if the contractor is not subject to other requirements specifying time and attendance reporting. Since a large proportion of housing rehabilitation and construction projects do not meet the unit thresholds that trigger Federal labor standards (*i.e.* eight units for CDBG, 12 units for HOME), grant administrators will regularly have to report labor hours based on a contractor's "good faith assessment." Use of this approach will introduce an unknown error margin into the calculation of labor hour benchmarks. This lack of data integrity calls into question the meaning of the proposed benchmarks and the soundness of using "labor hours" as a unit of measurement. Commenters stated that Section 3 businesses who report labor hours in "good faith" need to have specific recording requirements (*i.e.*, software) to avoid manipulation; it is more efficient to rely on tracking systems instead of contractors' good faith submissions. Commenters stated that not all HUD construction projects are subject to Davis-Bacon compliance and even a good faith assessment of labor hours will require significant PHA resources to monitor, review, and compile. One commenter stated that while the proposed rule states that HUD will permit "a good faith assessment of the labor hours" for certain employers, recipients could still be required to establish new compliance procedures, including determining how to protect the privacy of Section 3 workers and businesses when supplied with labor hours supporting documentation.

HUD Response: The final rule is explicit that employers are not required to acquire a time-and-attendance system in order to comply with the Section 3 rule. The "good faith assessment" is a limited exception to be used by employers who do not have systems in place to track labor hours. This rule was put in place to avoid increased administrative burdens. HUD is aware of the margin of error represented in the good faith assessments, but has

concluded that even with this margin of error, the labor hours metric provides a more accurate reflection of the economic opportunities created in connection with HUD-funded activities than the new hires metric. The exception does not apply if the employer is subject to other time-specific requirements.

Section 3 Applicability Threshold, HUD's Lead Hazard Control and Healthy Homes Programs and All Section 8 Programs

Total Funds Threshold or per Project Threshold Versus an Increased Threshold

The proposed rule set the Section 3 applicability threshold for Section 3 projects to projects where the amount of assistance exceeds \$200,000. HUD received comments both in favor of maintaining the current \$200,000 threshold and in favor of the new proposed threshold. Commenters also addressed the use of a project versus a total funding threshold. In addition, other commenters provided a range of alternative frameworks for setting the threshold amount—different numbers and the inclusion or exclusion of different kinds of funding in the threshold calculations.

Some commenters recommended that the \$200,000 threshold be based on the total amount of funding received within the fiscal year because it is a more simplified and streamlined process. Commenters stated the change to a per project threshold would result in many housing production projects that are mainly small and resource constrained having to comply with Section 3 requirements for the first time, noting that a per project threshold can become complicated and burdensome when a recipient handles a large volume of contracts that are funded by multiple sources. Commenters went on to state that a per project threshold would reduce the number of economic opportunities directed to low-income persons and recommended continuing to subject Project Based Voucher programs to Section 3 requirements to ensure those opportunities are directed toward low-income persons and businesses that employ them. Commenters in this line of thought noted that the \$200,000 per project threshold would potentially exempt projects where the HUD funding is less than \$200,000, even though the combined total project funding is much higher. Commenters stated this could lead to a decrease in the number of projects subject to Section 3 and an

overall reduction in Section 3 program impact.

Other commenters supported the per project threshold generally without commenting on the amount or supported the \$200,000 per project threshold and saw it as an improvement. Some of these commenters noted that while \$200,000 is an improvement over the current threshold, it does not relieve underlying concerns that contractors may break up activities into small contracts of less than \$200,000 each to avoid accountability. Several commenters agreed that a \$200,000 per project threshold would still allow contractors awarded significant funding to avoid Section 3 requirements by carrying out small discreet activities even though they cumulatively spend more than the threshold amount. A commenter suggested that the final rule include a prohibition on such activity, so that HUD has authority to pursue enforcement measures if HUD determines a recipient is “gaming the system” to avoid Section 3 obligations.

Other commenters provided alternative threshold amounts at a range of figures up to \$1 million. Some commenters stated the \$200,000 per project threshold will not necessarily result in employment opportunities for low-income people, arguing a higher project amount does not inevitably translate to the need for new employees or a benefit to Section 3 business concerns. Commenters suggested an alternative \$250,000 threshold which would coincide with the Office of Management and Budget simplified acquisition threshold and could automatically change when that amount is updated. Other commenters supported using the \$250,000 threshold for all projects to include PHAs. Some large PHAs with Section 3 experience recommended raising the threshold to \$350,000 on a per project basis and making this threshold consistent across all programs and funding sources. Commenters in agreement with this notion also noted that HUD has determined that employment opportunities in CDBG funded projects under \$350,000 are very minimal, and these commenters argued that the same is also true of public housing projects. Commenters also recommended \$400,000 or higher to increase the number of program recipients exempted from Section 3 requirements from less than 4 percent to 20 percent, greatly reducing the compliance burden for smaller grantees. Still other commenters recommended a higher threshold of \$750,000, tied to the single audit threshold, noting that smaller grants

generally will not involve sufficient hiring opportunities to warrant the increased administrative burden. Other commenters recommended that a \$1 million threshold would be a better measure of a project of a scale that would have the potential to drive the hiring of Section 3 workers and justify the additional administrative burden on recipients, subrecipients, and contractors to implement the program, particularly state CDBG programs that primarily fund public infrastructure. Another commenter recommended exempting grantees that receive \$1 million or less annually in CDBG or HOME funds because such grantees focus on a finite set of activities that involve small projects.

Commenters stated that a low threshold will create an undue compliance burden for small projects. Commenters suggested that adopting a higher per project threshold would still ensure the majority of CPD grants are covered but would likely offer significant regulatory relief for smaller grantees, builders, developers, contractors, and subcontractors who are disproportionately burdened by regulatory obligations. Some commenters who advocated for a higher threshold linked their reasoning to the effect of the threshold amount on contractors and subcontractors, noting that Section 3 obligations apply to recipients, their sub-recipients and so on. Commenters described cases in which builders forgo using covered funds to avoid the liability and compliance burdens of Section 3, and situations where developers experience costly delays on projects while searching for qualified subcontractors who are not deterred by the Section 3 paperwork and certifications.

Commenters also suggested that both a recipient threshold at \$400,000 and a project threshold of \$200,000, applicable across all programs, would be most appropriate to reduce reporting burdens with a limited impact on the dollar amounts of funding covered. Another recommendation was to apply Section 3 obligations to any entity that receives at least \$200,000 during a program year for a specific program activity. Other commenters suggested either the threshold for contracts should remain \$100,000 in HUD assistance; or a “total contract value” threshold should be defined that will trigger Section 3 on HUD-funded contracts, regardless of the dollar amount of the HUD funding. Other commenters offered an alternative threshold of 10 percent of construction costs per project. Commenters also reiterated that some CDBG grant awards are very small,

ranging from \$50,000 to \$200,000, so units of general local government have difficulty finding contractors to bid on the projects, let alone finding a contractor that is a Section 3 business concern and is willing to work on a small project. Finally, commenters suggested limiting activities that trigger the threshold to only construction and rehabilitation, as defined within the Section 3 statute for CDBG, HOME and other CPD programs.

HUD Response: HUD acknowledges the considerations raised by all the commenters in their responses. HUD found that the portion of Section 3 expenditures excluded by the \$200,000 per project threshold generate relatively few Section 3 jobs. After weighing the various considerations, this final rule maintains the \$200,000 per project threshold in general but makes changes to the Lead Hazard Control & Healthy Homes Programs threshold. HUD believes that project funding levels help accurately define thresholds because the amount of funding spent on a project is directly related to the economic opportunities generated by the project. HUD acknowledges the potential disadvantages mentioned by commenters to using a per project threshold but reiterates the per project threshold will help provide opportunities for those who are recipients of Federal financial assistance for housing or residents of the community in which the Federal financial assistance is spent. In addition, HUD remains open to adjusting thresholds in the future based on updated data analysis. The final rule clarifies that HUD may change the thresholds and benchmarks at a later date via **Federal Register** notice, subject to public comment, based on updated data input and accounting for inflation. HUD also notes that not every contractor, subcontractor or sub-recipient must use Section 3 workers. A funds recipient could meet its Section 3 benchmarks with one contract to a Section 3 business concern where the number of labor hours worked is 25% or more of all the labor hours worked by all workers on a Section 3 project while not using Section 3 workers for other work. The recipient has flexibility in determining how to meet its benchmarks.

Lead Hazard Control & Healthy Homes Programs Inclusion

Commenters who advocated for a single consistent per project threshold across all programs stated that the Lead Hazard Control and Healthy Homes programs should also be subject to the same threshold. Other commenters

agreed that Lead Hazard Control and Healthy Homes projects should be exempted from administrative and compliance burdens based on a threshold of \$200,000 or greater, stating these projects are unlikely to generate many employment opportunities because they are small and Lead Hazard Control abatement and interim controls is to be done by trained and certified workers.

Some commenters agreed that including Lead Hazard Control projects with no threshold would increase the administrative burden without a benefit, and while the exclusion is understandable, HUD should pursue a standardized threshold to avoid complicating Section 3 by creating a different scope for Lead Hazard Control and Healthy Homes programs. Commenters generally supported higher thresholds for Lead Hazard Control and Healthy Homes programs. A commenter suggested it may be appropriate to use the community development assistance threshold for simplicity. Alternatively, commenters suggested a more modest reporting threshold of not less than \$50,000 for Lead Hazard Control and Healthy Homes projects, stating that for grantees working on multifamily projects in high cost cities, projects where the contract is less than \$50,000 tend to be awarded to smaller contractors. A \$50,000 threshold would meet HUD's admirable intention of ensuring greater Section 3 participation from Lead Hazard Control and Healthy Homes grantees without imposing hardship on such small contractors.

HUD Response: HUD agrees that the \$200,000 threshold should not apply to Lead Hazard Control and Healthy Homes programs since those projects are generally smaller dollar amounts. However, in keeping with Section 3's statutory priorities and applicability, HUD is choosing to adopt a \$100,000 project threshold regarding application of Section 3 to Lead Hazard Control and Healthy Homes programs.

Section 8 Programs Exclusion

Many commenters supported the exclusion of Section 8 programs in the proposed rule, as Section 8 programs are not included in the statute. Commenters went on to note that because Section 3 programs are development subsidy sources and Section 8 programs provide operating subsidies, Section 8 assistance recipients should not be subject to Section 3 regulatory responsibilities. Commenters noted that the primary purpose of Section 8 programs is to provide a rental subsidy that covers the difference between the contract rent and 30 percent of the tenant's income,

stating these programs are "affordability tools, not construction tools," and agreed HUD should not increase regulatory burdens on housing providers by expanding the scope of Section 3 to programs not covered in the statute.

Some commenters urged that for Subpart B, HUD should retain an option for PHAs to report on Section 3 requirements for Section 8 funded programs, noting that these programs generate significant employment and training opportunities for Section 3 workers. Commenters suggested HUD format Section 3 reporting so that Section 8 funded placements can be captured as part of a PHA's overall efforts. Commenters also suggested the current reporting system be updated to allow for the reporting of other placements that might be excluded with the new proposed rule, such as placements under professional service contracts.

HUD Response: Section 8 programs are not covered under the Section 3 statute. Therefore, HUD in this final rule maintains the clarification in the proposed rule that Section 8 programs are excluded from Section 3 requirements.

Section 3 Project Definition

Commenters recommended that HUD more clearly define "project" for the purpose of Section 3, and asked how HUD would view a job order contract of more than \$200,000 that may work on various locality-owned sites (e.g., all of a locality's schools or homeless shelters). These commenters also asked, if several unrelated HUD-funded activities are taking place at the same location and have a combined value of more than \$200,000 constitutes a project. Lastly, the commenters asked whether the per-project threshold is based solely on construction-related activities, and whether the level of Federal assistance to a project must exceed the \$200,000 threshold to trigger Section 3.

Another commenter recommended that HUD define "project" as follows: Project means a site or sites together with any building or multiple buildings located on the site(s) that are under common ownership, management, and financing and are to be assisted with Section 3 covered funds as a single undertaking. A program that funds multiple buildings under separate ownership, management and financing is not a project.

HUD Response: HUD supports the Section 3 Project definition within the proposed rule and believes it is consistent with the statutory

requirements of HUD programs. HUD also intends to provide sub-regulatory guidance and technical assistance on a program-by-program basis to assist recipients with Section 3 implementation.

Section 3 Worker

Rule Rewards Creating Opportunities for Persons Who Are Not Low-Income

Commenters stated that the rule, particularly the definitions of Section 3 worker, rewards creating opportunities for persons who are not low-income, which would be counterproductive to the intent of the Section 3 program. A commenter stated that the proposed definition could inadvertently include individuals who are not low-income because categories (ii) and (iii) are not income-based.

Specifically, some commenters objected to category (ii) which allowed workers who live in a Qualified Census Tract (QCT) to be included in the definition of "Section 3 worker" because these individuals will not necessarily be low-income. One commenter noted this is especially true in large metropolitan cities with mixed income communities and gentrifying areas. Another commenter stated that researching employee residence as of the date of hire to determine census tract qualification will be difficult or impossible for long-term employees who may have moved multiple times. Commenters warned that the QCT designation would create a risk of potential abuse by recipients. Some commenters suggested removing the QCT criteria altogether since the definition already includes a low- or very low-income person.

Other commenters objected to category (iii) which included all Section 3 business concern employees as Section 3 workers. These commenters stated that someone working at a Section 3 business concern is not necessarily a resident of HUD-assisted housing, nor is it likely that a business owned by 51% low-income people would hire only public housing or HUD-assisted residents. For this reason, commenters recommended that HUD should exclude "a worker employed by a Section 3 business" from its definition and benchmarks and the definition of Section 3 worker and Targeted Section 3 worker. One commenter noted the phrase "worker is employed by a Section 3 business" is included in both the Section 3 worker and Targeted Section 3 worker definitions and recommended including this term in the Targeted Section 3 worker definition

only and not the Section 3 worker definition.

HUD Response: HUD agrees that paragraph (1)(ii) could inadvertently include individuals who are not low-income. This final rule removes paragraph (1)(ii) regarding the QCT from the definition of “Section 3 worker” from this final rule. However, HUD disagrees that the category of Section 3 business concerns should be removed from the Section 3 worker and Targeted Section 3 worker definitions. The Section 3 statute states that HUD must prioritize Section 3 business concerns. If HUD did not include Section 3 business concerns in the definitions that are used for the benchmarks, PHAs and other HUD funded entities would have no incentive to hire Section 3 businesses. Including all Section 3 business concern employees in the definition of Section 3 worker and Targeted Section 3 worker creates an incentive to contract with a Section 3 business while maintaining a single reporting metric. The final rule maintains that all hours worked on the project by the Section 3 business counts towards the benchmarks. HUD believes these changes are consistent with the statute.

Prior Conviction

One commenter wrote that convictions for certain categories of crimes may have a direct bearing on the worker’s suitability for particular jobs. Previous theft convictions, for example, may be relevant for a worker who will be involved in procurement and distribution of materials. Other commenters supported this language, stating that “there is no evidence that hiring an individual with a criminal history will have a negative impact on employee success.” The commenters also noted that the language is consistent with other HUD guidance on the use of background reports in housing decisions. However, one commenter suggested a minor revision to clarify the regulation: “A recipient, contractor, or subcontractor shall not refuse to hire a Section 3 worker on the basis of a prior arrest or conviction, unless otherwise required by Federal, state, or local law.”

HUD Response: HUD agrees with the commenters that convictions for certain crimes, such as fraud or theft, might affect a worker’s qualifications for a particular position, and that “there is no evidence that hiring an individual with a criminal history will have a negative impact on employee success.” HUD notes that the Section 3 worker definition provides that an individual’s prior arrest or conviction shall not negatively impact their Section 3 worker

status, but the definition maintains the requirement that the individual is qualified for the job. Job qualifications may include the worker’s arrest or conviction history. The rule does not require a Section 3 worker with a criminal history to be hired. HUD has considered the suggestions and has chosen to keep the regulatory language in § 75.5. *See Section 3 business concern*, § 75.5 (“The status of a Section 3 business concern shall not be negatively affected by a prior arrest or conviction of its owner(s) or employees.”); *Section 3 worker*, § 75.5 (“The status of a Section 3 worker shall not be negatively affected by a prior arrest or conviction.”); *Targeted Section 3 worker*, § 75.5 (“does not exclude an individual that has a prior arrest or conviction.”)

Additional Categories

One commenter stated that the proposed rule no longer explicitly lists a public housing resident as a “Section 3 resident” and does not provide for the employer to continue counting that worker in the future. Another commenter suggested that staff hired by a PHA should be counted toward Section 3 requirements. Commenters suggested additional categories and expansion of existing categories, and requested HUD explicitly list the following: people immediately prior to hiring are public housing, Section 8, Section 811, Section 202 residents or other low-income people, and women. Commenters recommended that a “Section 3 worker” should be a worker whose income is below the limit set by HUD, or a resident of public or HUD-assisted housing.

One commenter supported the change to using an individual’s status as low-income versus household income, which will increase the pool of persons that can be counted as a Section 3 worker and make meeting the benchmarks more attainable. Commenters requested clarification on whether the HUD-defined low-income level will be based on individual or family income and one commenter recommended the use of only an individual’s income.

HUD Response: HUD wants to clarify that, while the definition of Section 3 worker does not include public housing residents, it does include all workers whose income is below the income limit established by HUD, which is the same limit that would qualify someone for public housing. Therefore, public housing residents would be considered Section 3 workers. HUD does not believe that all staff hired by a PHA should be counted as Section 3 workers.

Those staff that meet the qualification of a low or very low-income person, as defined by HUD’s income limit, would already qualify, and HUD does not think it is appropriate to include all PHA staff. As for expanding the categories further, the Section 3 statute is specific as to the priorities that HUD should be providing with employment and other economic opportunities generated by Federal financial assistance. Therefore, HUD is not expanding the scope of Section 3 workers beyond those listed in the statute. HUD changed the Section 3 worker definition to include a worker whose income is below the income limit established by HUD in place of the family income and appreciates the comments in support of the change.

Setting Time Limits

Commenters recommended that HUD should keep the existing standard of a three-year period for counting workers in order to account for staff turnover and to generate more accurate metrics. Other commenters recommended HUD limit someone counting as a Section 3 person to 5 years. Another commenter stated that because many contractors and subcontractors report no new hires for specific projects, a Section 3 worker should be defined as one who “at the time of hire” was low- or very low-income. One commenter asked HUD to be more specific in defining a Section 3 worker rather than stating low-income is a “limit established by HUD.”

HUD Response: HUD agrees with the commenters that a worker whose income has risen should only be counted for Section 3 purposes for five years. HUD wants to ensure employers are invested in keeping Section 3 workers employed, and that there is enough opportunity to build skills and experience so that Section 3 workers may develop self-sufficiency and compete for other jobs in the future. An employer may choose whether the workers are defined as Section 3 workers for that five-year period at the time of the workers’ hire, or the date from which the workers are certified as meeting the Section 3 worker definition.

Guidance

Commenters requested that HUD provide more specific guidance regarding how to calculate labor hours for the purpose of determining Section 3 status. For example, is there a set timeline for consideration, such as during the past year or several years? Or is it based on the business’ last 1–2 payrolls to capture the most recent picture of employment? Commenters stated that it is unclear over what time period labor hours are to be measured.

One commenter stated that it is unclear whether the “labor hours” standard relies on the labor hours on the Section 3 project, or in general.

HUD Response: HUD will provide additional guidance to assist PHAs and grantees in how to calculate labor hours. Generally, labor hours will be calculated based on the labor performed on a Section 3 project for housing and community development financial assistance or on all labor hours performed within the fiscal year for public housing assistance.

Subrecipient

One commenter stated that using the applicable definition of subrecipient in the HOME program would mean that multifamily owners contracting directly with the State may not have to comply with Section 3 requirements because they are not included in that definition for the HOME program in 24 CFR 92.2. This commenter also noted that multifamily owners are also not often contractors (under the proposed definition), because they do not enter into a contract with a recipient to perform the work. This commenter suggested inclusion of owners in the HOME program and changing the definition of subrecipient to say “has the meaning provided in the applicable program regulations, and in 2 CFR 200.93” or suggested HUD amend the definition of contractor to further define the phrase by adding “work in conjunction with a Section 3 project,” to more clearly identify that it includes an owner in the HOME program that contracts with general contractors.

HUD Response: HUD appreciates the comment. However, subrecipient has different meanings in different programs, which is why HUD defined it as either the meaning as is applied in the specific program or 2 CFR 200.93.

Targeted Section 3 Worker Definition

Some commenters supported the new “Targeted Section 3 worker” definition and eliminating tracking Section 3 business concern types separately. Some commenters stated that the Targeted Section 3 worker concept is consistent with the goal of expanding employment opportunities for individuals that receive Federal assistance for housing. Another commenter agreed with HUD’s efforts to track and target certain high priority Section 3 workers separately and efforts to fold Section 3 business concern engagement into other benchmarks.

Other commenters opposed the “Targeted Section 3 worker” definition, stating that it is duplicative with worker categories already given preference

under § 75.9. Commenters stated a separate reporting category for “Targeted Section 3 worker” merely complicates reporting requirements for recipients, contractors, and subcontractors, and recommended HUD keep the existing definition and the existing priority preference order. Other commenters noted that tracking additional information to determine Section 3 compliance would be burdensome.

A commenter recommended that hours worked by Section 3 business employees be categorized as regular Section 3 worker hours and Targeted Section 3 worker hours depending on the employee’s status to avoid inflated reporting of hours worked by targeted Section 3 workers. Other commenters suggested that a worker employed by a Section 3 business only be included in the “Targeted Section 3 worker” definition because it was created to better align the regulation with the law.

Commenters stated that counting all Section 3 business concern employees as Targeted Section 3 workers is problematic and risks questionable data. HUD should exclude “a worker employed by a Section 3 business” from the definition of Targeted Section 3 worker and Section 3 worker. Including “a worker employed by a Section 3 business” in the definition of “Targeted Section 3 worker” dilutes the purpose of creating a Targeted worker designation. It also frustrates the purpose of the statute, which is to give priority to public housing and other HUD-assisted residents in employment and training opportunities, along with low-income families near the Section 3 project location.

Commenters also suggested that HUD include public and HUD-assisted housing residents in the Targeted Section 3 worker definition for Section 3 projects, not just PHA projects. The proposed definition of Targeted Section 3 worker for PHA projects more accurately interprets the statutory priority of Section 3 to employ public housing and other Federally assisted residents than the definition for CPD recipients. One commenter recommended that HUD include the word priority in the definition of “Targeted Section 3 worker” to clarify the requirements and add objective criteria or guidance by which to monitor or measure success or satisfactory performance.

HUD Response: HUD appreciates the commenters’ recommendation to target public and HUD-assisted housing residents in both funding types. However, the statute specifies priority categories differently for recipients of

public housing financial assistance and housing and community development financial assistance. The Targeted Section 3 worker is a concept designed to serve as a proxy for the highest priority categories, allowing HUD to collect data through standardized reporting regarding the funding recipients’ efforts with respect to the priority categories. HUD believes that the definitions of Targeted Section 3 worker for both public housing financial assistance and other housing and community development financial assistance funds provide good reporting proxies for the statutory priorities and should remain as proposed. As Targeted Section 3 workers are a proxy for the priority categories solely for reporting purposes, and do not replace the prioritization that funding recipients must apply in their efforts under Section 3, the use of the word “priority” in the definition would be inappropriate.

§ 75.11 Targeted Section 3 Worker for Public Housing Financial Assistance

Commenters stated that HUD should combine 75.11(a)(2)(i) and (ii) into a single category, “residents of public and HUD-assisted housing” to more clearly include residents of all HUD-assisted housing programs and conversion projects. Commenters supported the addition of Section 8 assisted households. This change mirrors the Section 3 statute, which broadly emphasizes employment and training opportunities for “recipients of government assistance for housing.” Some commenters recommended deleting paragraph § 75.11(a)(1), because it is redundant with § 75.5. Commenters also asked HUD to clarify what “residents of other projects managed by the PHA” covers. One commenter suggested HUD add “administered by the PHA” when describing Section 8 assisted housing.

HUD Response: HUD appreciates the support for the categories in § 75.11 and recommendations to make changes to include additional HUD programs. HUD believes that consistent with the statute, the Targeted Section 3 worker definition for public housing financial assistance should focus on the categories as listed. To be inclusive of residents in other housing assisted by the PHA and residents of housing in the property management portfolio of the PHA, both categories have been included in the regulation in place of the vaguer term “managed by the PHA.” Those residents would also count as Section 3 workers for purposes of Targeted Section 3 workers for public housing financial assistance. The rule’s current “resident

of other projects managed by the PHA'' has been replaced, which should address the commenter's concerns.

§ 75.21 Targeted Section 3 Worker for Housing and Community Development Financial Assistance

One commenter wrote that limiting the definition to a geographic area eliminates large sectors of nearby Section 3 workers and business. Another commenter noted some State CDBG programs do not operate in areas where public housing residents or YouthBuild participants typically live. Commenters also stated that the proposed definition gives broader opportunity to identify low-income construction employees for Section 3 projects but requires wage calculations and census tract verification from contractors already burdened by paperwork and will remove the focus from employing eligible persons living within a neighborhood.

HUD Response: HUD retained the proposed Targeted Section 3 worker definition in the final rule. The rule creates the "Targeted Section 3 worker" concept so that HUD can track, and recipients can target, the hiring of Section 3 workers in selected categories based on the statute's hiring priorities. The Targeted Section 3 worker category also incorporates the statutory requirements of contracting with business concerns employing low- and very low-income persons. For other HUD housing and community development financial assistance programs, such as the State CDBG program or HOME Investment Partnerships programs, Targeted Section 3 workers would be low- or very low-income workers residing within a one-mile radius of the Section 3 project. If fewer than 5,000 people live within that one-mile radius, the circle may be expanded outward until that population is reached.

The requirement that contractors verify whether workers are low or very low-income for tracking purposes is not new. Contractors were already required to verify new hires as qualifying for Section 3 status, and the statute requires that employment and other economic opportunities generated by work in connection with housing rehabilitation, housing construction or other public construction projects receiving housing and community development assistance be directed to low- and very low-income persons in the local community. HUD's proposal to use Targeted Section 3 workers for housing and community development programs that fall within a defined service area should reduce burden because HUD's mapping tool

will identify the jurisdiction the contractor should target.

§ 75.5: Section 3 Business Concern Definition

Previous Rule's "Dollar Value" Method

Commenters stated that the previous "dollar value" method of reporting contracts awarded to Section 3 business concerns should be kept, as it gives recipients and general contractors a clear benchmark to achieve when selecting subcontractors and aligns with methods many are already using to report on minority-, women-, and veteran-owned businesses. Commenters noted Section 3 is designed to promote wealth-building in addition to employment opportunities and the "dollar value" method is a better measure of economic opportunities provided to low-income owners of Section 3 business concerns than the labor hours worked by their employees. Without having a metric tied to the number of contracts awarded to Section 3 business concerns, commenters anticipated a reduction in the number of contract awards, and a reduction in employment opportunities. One commenter stated that both definitions will likely continue to be a challenging means of qualifying for eligibility and may prove difficult to document.

HUD Response: HUD found the Section 3 business concern definition to be consistent with both the previous regulation and with the statute, although HUD notes that the final rule's definition does impose more rigorous criteria for qualifying as a Section 3 business concern with respect to the percentage of workers who must be Section 3 workers. This additional rigor in the criteria ensures that, if qualifying on the basis that the firm employs Section 3 workers, a high percentage of workers are in fact Section 3 workers, and ensures that, if qualifying on the basis that the owner is a low-income individual, the owner is in operational control and will benefit from the wealth creation opportunities. The changes to the Section 3 business concern definition do not depend on the change in reporting to a labor hours metric.

HUD recognizes that some in the industry have found the "dollar value" method to be workable, and that the dollar value metric does provide a measure of the extent of contracting to Section 3 business concerns. However, HUD believes there is value in having a unitary reporting metric—labor hours—and has designed the metric to measure both direct employment and to reflect prioritization of contracting with Section 3 business concerns. HUD

believes that this new method will be effective, will encourage wealth creation opportunities for the owners of Section 3 business concerns, and will provide the opportunity for recipients of HUD financial assistance to determine which projects use Section 3 businesses in a way that is not administratively burdensome.

Rule Rewards Creating Opportunities for Persons Who Are Not Low-Income

One commenter stated that the focus on hours worked is appropriate in light of the statute's focus on providing economic opportunities to low-income residents, but aggregating hours poses a risk that non-low-income people at Section 3 business concerns may report hours, though this risk is mitigated by the Section 3 business concern definition. Another commenter stated that the 51% owned and 75% labor hours requirements allow Section 3 business concerns to employ persons who are not low-income or very low-income.

Another commenter supported replacing the aggregate dollars spent metric, but stated that including all Section 3 business concerns' employee hours will lead to the misleading inclusion of non-low-income worker hours in the data; only the hours worked by the low- and very low-income employees of a Section 3 business concern should be reported as Section 3 hours worked.

HUD Response: According to the Section 3 statute, HUD must prioritize businesses that provide economic opportunities for low- and very-low-income persons. The statute does not require that HUD prioritize business that only provide economic opportunities for such persons. If HUD were to include only the Section 3 workers in the reporting metrics, the regulation would not effectuate the statutory requirement to also place an emphasis on Section 3 business concerns. The Section 3 statute states that HUD must prioritize Section 3 business concerns in the awarding of contracts. By collecting labor hour data on all employees of Section 3 business concerns, HUD is creating an incentive to contract with a Section 3 business concern while maintaining a unitary reporting metric for Section 3 performance. The final rule maintains the provision of the proposed rule that all hours worked on the project by the Section 3 business concern counts towards the benchmarks, with the awareness that this reporting framework will collect labor hour data for workers who are not low-income. This serves as the incentive to contract with Section 3

business concerns. HUD believes these changes are consistent with the statute.

Verification

A commenter stated that nothing addresses processes for verification of Section 3 business concern eligibility, and that HUD should enhance the Section 3 business concern registry to include confirmation of eligibility or work with Equal Employment Opportunity Commission to assist jurisdictions with certification programs. One commenter noted that using the Section 3 business concern registry to project availability of Section 3 workers is unreliable because the registry is a self-reporting structure with no mechanism to verify the business on the list, it assumes such businesses are able to work in any geographic area, and many PHAs in rural and suburban areas have reported that there are no Section 3 business concerns in their areas.

Another commenter raised the issue that verifying Census tract designations would create an additional burden, especially Census tract data that changes over time, which will result in fewer contractors participating in Section 3 projects.

One commenter stated apprehension about this part of the definition because accurately tracking and reporting labor hours will be much more challenging than tracking and reporting full-time employees. The proposed definition also makes it difficult for Section 3 business concerns and the entities that contract with them to predict with confidence that they will retain their Section 3 status, as labor hours can be dependent on the number of contracts a business bids for and receives.

Another commenter requested clarification regarding how long a business retains the Section 3 business concern status once it is certified as a Section 3 business concern. Commenters suggested HUD or the local government should bear the responsibility for verifying the eligibility of a Section 3 business concern, rather than shunting that responsibility to the builder, general contractor, or subcontractors. HUD's online Section 3 Business Registry⁴ was a positive first step, but HUD does not verify the self-certifications submitted by the business concerns, and it cautions database users to perform due diligence before awarding contracts.

HUD Response: HUD plans to continue the use of the Section 3 Business Registry as an available public

tool. While HUD appreciates the suggestion that HUD or the local government make determinations of eligibility for Section 3 business concerns, HUD believes that, consistent with other paperwork requirements, it is appropriate that the entity receiving HUD financial assistance ensure compliance with Section 3 requirements, which includes confirming that both Section 3 workers and Section 3 Business concerns qualify as such under this regulation. HUD addressed commenters' concerns about Census tract designations by removing that language from the rule, and concerns about labor hours are addressed in previous comment responses. Once a business is certified as a Section 3 business concern, it will retain that status as long as it continues to meet the definition. Status is determined at the time of hiring for each contract and is no different from any other definition. Currently, business concerns self-certify, and verification is done by HUD. The timing is on a project by project basis.

(1)(i) *"At least 51 percent owned by low- or very low-income persons"*

One commenter stated that this part of the definition follows the statute's intent. Another commenter stated that 51 percent ownership by low- or very low-income persons is unrealistic without training programs on business management.

HUD Response: HUD appreciates the feedback from commenters and is keeping this part of the Section 3 business concern definition as it is. HUD has found this definition to be consistent with both the previous regulation and with the statute. HUD notes that the definition also includes other methods by which a business concern may be defined as a Section 3 business concern. See 24 CFR 135.5; 12 U.S.C. 1701u (e)(2).

(1)(ii) *"Over 75 percent of the labor hours . . . performed by low- or very low-income persons"*

Commenters supported changes to definitions of Section 3 business concerns, Section 3 workers, and Targeted Section 3 workers under the new hire approach. One commenter stated that the decision to focus on percentage of hours worked by Section 3 individuals will result in a decrease of self-identified Section 3 business concerns. The commenter asserted that although it is a better metric for proving actual commitment to long-term employment of Section 3 individuals, gathering the data will be overly burdensome. One commenter stated that this option will present undue hardship

to small businesses and should be omitted. Another commenter stated that this requirement will negatively affect HOME and CDBG funded projects.

Some commenters supported tracking Section 3 hiring separately from Section 3 business concern tracking. Section 3 business concerns are already encouraged to retain existing employees to meet the previous Section 3 business concern definition. Counting existing employees to meet both the contract and hiring goals may result in decreased new hiring in connection with Section 3 covered assistance. Commenters recommended only tracking new Section 3 hires employed by Section 3 business concerns relative to a contractor's hiring goals.

One commenter also stated that even though the proposed rule provides a mechanism for PHAs to continue documenting compliance through a "new hire" metric, this proposed definition would still require PHAs to analyze a business's labor hours in order to determine whether a business could qualify as a Section 3 business concern.

One commenter noted the new burden would affect businesses who may not meet the new markers and might reevaluate the benefits of working with PHAs given the increased work to track labor hours. The commenter noted in an environment where getting bids is already difficult this would further dissuade them from doing business with PHAs. Other commenters suggested focusing on long-term employment goals for employees, developing benchmarks for growth of Section 3 business concerns, providing micro-business support, and targeting capital construction projects for mentorship and sub-contracting with Section 3 business concerns.

Some commenters stated that the definition of a Section 3 business concern should remain defined in part as a business where at least 30% of the permanent, full-time workforce are currently Section 3 residents, or were Section 3 residents within three years of the date of first employment at the business concern.

Commenters stated that this proposed amendment would render most Section 3 business concern owners in the commenter's city ineligible, as over 50% qualified by meeting the existing standard for the makeup of their workforce (30% full time permanent employees who are Section 3 residents). The result will be fewer Section 3 business concerns maintaining and/or seeking certification and will further compound the challenges of helping low-income workers access jobs. Most Section 3 business concerns do not

⁴ HUD, *What is the Section 3 Business Registry?*, Hud.gov, <https://portalapps.hud.gov/Sec3BusReg/BRegistry/What>.

possess the infrastructure to support tracking this information. A commenter stated that 75 percent of labor hours is too high as a standard for determining Section 3 business concern eligibility. A smaller percentage would be more appropriate, or perhaps HUD could allow businesses to qualify either by labor hours or percentage of staff. Commenters stated that the 75 percent criterion would defeat important purposes of the Section 3 program which include encouraging business creation and increasing contract opportunities for businesses that employ a substantial number of low-income residents.

One commenter stated that it would significantly increase compliance costs, and that HUD appears to assume that every project will be tracking employee hours worked due to the applicability of federal prevailing wage requirements, but this is not the case. This commenter's program includes projects that are not subject to prevailing wage requirements, but that are subject to Section 3. Another commenter stated that the new definitions could pose significant challenges to businesses as they will have to first determine which employees are considered low- and very low-income persons, and then have to calculate if their labor hours are over 75 percent.

One commenter agreed that reporting on business concerns should not be an aggregate of dollars spent. The commenter recommended that HUD keep the self-certification tool and website resource and incentivize Section 3 contractors to register to make this resource as useful as possible. The commenter observed a review of the website shows that some states do not have any Section 3 contractors listed.

Commenters stated that the change from 30 percent of full-time employees to 75 percent of labor hours performed will limit Section 3 business concerns only to those lower-skilled businesses (cleaning companies, moving companies, perhaps landscaping or painting companies) that hire an overwhelming majority of their workers as low-income.

One commenter stated that the proposal will not have the intended impact of increasing access to opportunity. This change would look backwards rather than measuring opportunities provided as a direct result of the contract award. In practice, this change would significantly impact administrative efforts, would adversely affect other qualified Section 3 business concerns, and potentially limit employment opportunities available to the targeted population.

One commenter stated that the rule should keep the threshold at 30% but change it to hours worked rather than new hires and retain other elements of the current definition. The commenter recommended that HUD only count the hours worked by Section 3 residents toward the percentage goals of hours worked by Section 3 residents (not all employees of the Section 3 business concern). The commenter believes the 30% benchmark creates an incentive for established businesses to create a professional development component to their project approach, while 75% is much too high for most businesses to pursue.

One commenter recommended the definition be modified to include more than 75 percent of the labor hours worked at the business are performed by public housing, Section 8, Section 811, or Section 202 residents or persons who, immediately prior to the date of hire, were low- or very low-income, particularly women. Commenters suggested removing the 75 percent labor hour portion all together. If HUD proceeds with this definition, it should consider a transition period so existing Section 3 business concerns can adjust to the new definition.

HUD Response: HUD believes that the refined definition continues to reflect the language and intent of the Section 3 statute, defining Section 3 business concerns in a way that furthers economic opportunities for low- and very low-income persons. HUD recognizes that 75% is a higher number than the prior new hire standard but believes that Section 3 business concerns should be either majority owned by low or very low-income persons or should primarily employ such individuals. HUD believes that the prior 30% standard does not ensure that a sufficiently substantial number of low- or very-low-income persons benefit from the priority contracting status that the Section 3 statute and regulation provide. Section 3 business concern employees are counted as Targeted Section 3 workers, giving HUD funding recipients and Section 3 projects an incentive to hire them to meet their Targeted Section 3 Benchmark numbers. HUD acknowledges that the revised definition of Section 3 business concerns may result in a decrease in firms qualifying for the designation, but the benefits of qualification will be more directly targeted to low- and very-low-income persons. HUD notes that the safe harbor benchmarks can be adjusted by notice periodically, which is intended to allow HUD to modify the benchmarks to accommodate geographies where the initially proposed benchmarks cannot

be met due to the unavailability of Section 3 workers and Section 3 business concerns. HUD amended this provision to clarify that the 75% of labor hours should be determined based on looking back over the last 3 months of work performed for the business. The determination as a Section 3 business concern is made at the time the contract or subcontract is executed, so that the program participants have certainty in their Section 3 strategies. However, the final rule also provides flexibility to establish Section 3 business concern status during the Section 3 covered activity, to provide further incentive to employ Section 3 workers. If the business performed multiple projects, all of the hours on the projects over the prior three-month period should be considered for making the determination.

HUD notes the comment that observed a Section 3 business concern might need to track labor hours to be qualified, even if the federal funding recipient is reporting new hires. By eliminating the new hire alternative reporting metric, HUD anticipates that this dimension of documenting qualification as a Section 3 business concern will be mitigated. HUD further notes that businesses do not need to track labor hours precisely. HUD is not presuming the applicability of prevailing wage requirements, but rather is presuming that all employers paying an hourly wage will have some method to tabulate the number of hours worked, and for those that do not have a tracking mechanism in place, the final rule permits them to rely on a good faith assessment. An objective of Section 3 is to provide employment opportunities for public housing and low-income residents, which can lead to a focus on long-term employment goals. Other activities identified by the commenters are better suited for business development and therefore are outside the scope of this rule.

As for the concern that the definition will limit wage growth or promotion or result in Section 3 business concerns where all employees have low-income wages, HUD provides that the qualification of a Section 3 worker takes place at either the date of the Section 3 covered activity or the date of initial hire by the employer, not more than five years previously. Labor hours of an employee who is low- or very low-income at hire will continue to count for 5 years even if that person grows into a new, more advanced position. HUD anticipates that the employee with 5 years of experience with that same employer would be moving up in the business and would eventually need to

be replaced by a new, presumably low- or very-low-income entry-level employee. The definition has been modified to clarify this framework and to reduce the potential incentive to maintain workers at lower salaries simply to qualify as a Section 3 business concern. HUD also acknowledges that many entry-level opportunities for low-wage workers are in businesses and industries with a high percentage of low-wage employment possibilities. HUD determined not to implement a transition period, although contracts with Section 3 business concerns entered into under the regulations in place prior to the final rule's compliance date will continue to be considered Section 3 business concerns.

(1)(iii) at least 25 percent owned by current public housing residents or Section 8 residents

One commenter stated that the revised definition of at least 25 percent owned by current public housing residents, or residents who currently live in Section 8 assisted housing, will be easier to justify than evidence of a commitment to subcontract 25 percent or more of the dollar amount to all subcontracts. Other commenters stated that the third option for defining "Section 3 business concern" should be modified to require that the business have 51% ownership by public housing or Section 8 residents. These commenters warned that unless residents have majority control there is a danger of the business being a front for owners who might not represent residents' interests.

Further, the statute defines a Section 3 business concern as one with Section 3 residents having a controlling interest, or the business employs a substantial number of Section 3 residents. The commenter does not believe that this new proposed criterion is appropriate. Commenters also thought it would be inconsistent with the Congressional statutory intent that economic opportunities be provided to business concerns that are *majority owned and controlled* by low- and very low-income people and/or residents of government assisted housing. (12 U.S.C. 1701u(b)). Commenters further argued reducing the required ownership percentage would also be inconsistent with HUD's public housing regulations at 24 CFR part 963, which defines resident-owned business as one "(1) which is at least 51% owned by one or more public housing residents and, (2) whose management and daily business operations are controlled by one or more such individuals." Commenters felt reducing the required ownership percentage would invite

manipulation and abuse, the prevention of which would require a significant administrative burden. Commenters recommended the Section 3 regulations should be designed to encourage entrepreneurial development, not a passive ownership interest.

HUD Response: HUD agrees with commenters that the 25% ownership language may create the risk of unscrupulous business practices. Therefore, HUD revised the final rule to require a Section 3 business concern seeking to meet this third test be 51% owned and controlled by PHA residents and Section 8 residents, in place of the 25% test contained in the proposed rule. This number is also more consistent with HUD's current contracting provision for PHA resident owned businesses in 24 CFR part 963.

Wages

Commenters stated that businesses should not be rewarded for paying low wages; businesses should not receive a contracting preference by virtue of the fact that they pay their employees low wages. The commenters asserted Section 3 regulations should be designed to reward businesses that provide economic opportunities to low-income persons so that they have a chance to work their way out of poverty, and the income determination must be made immediately prior to the date of hire. According to the commenters, HUD's regulations should also reward employers who provide decent-paying jobs so that their employees no longer need to depend on HUD assistance to make ends meet. Commenters observed that by determining the low-income status of employees at the time of contract award (the labor hours "are performed by low- or very low-income persons") the definition inadvertently restricts eligibility to businesses whose employees are currently low-income. For these reasons, the commenters proposed that the definition of "Section 3 business concern" be changed to "Over 75 percent of the labor hours performed for the business are performed by persons who were low- or very low-income immediately prior to the date of hire and whose current wage is equal to or greater than 80 percent of the area median income."

HUD Response: The Section 3 regulations are designed to provide jobs for low-income persons. As these individuals gain experience, HUD anticipates wages will increase, and the individuals should be able to work their way out of poverty. The definition has been modified to clarify this framework by including a three-month documentation period and to reduce the

potential incentive to maintain workers at lower salaries simply to qualify as a Section 3 business concern.

Contract Requirement

One commenter expressed concern over the elimination of Section 3 business concern contracting requirements because the commenter's agency spends a lot of resources on outreach, but recognized many housing authorities lack the resources or diverse vendor marketplaces to do the same.

HUD Response: HUD recognizes that not all PHAs will have the same resources to outreach to Section 3 business concerns. HUD believes, however, that counting the Section 3 business concern employees as Targeted Section 3 workers will incentivize PHAs to target Section 3 business concerns to help meet their Targeted Section 3 worker benchmark. HUD will continue to have a Section 3 business concern directory as well to make it easy for PHAs and other entities to identify Section 3 business concerns in their jurisdiction. HUD also believes that making the definition consistent with the PHA resident-owned businesses definition in 24 CFR part 963 will also provide another avenue for finding Section 3 business concerns.

Alternative Suggestions for the Definition of Section 3 Business Concern

One commenter recommended that HUD extend Section 3 business concern status to businesses funded through the Opportunity Zone program.⁵ Commenters suggested defining a Section 3 business concern as meeting one of the following categories, in the following priority order: (1) Businesses owned 100% by Section 3 persons; (2) businesses owned and operated at a minimum 51% by Section 3 Persons; (3) Businesses whose total employees consist of a minimum of 75% Section 3 persons who reside within the project area; (4) Businesses whose total contract specific staffing (not back office administration unless the opportunity created is a back office position) has more than 50% Section 3 persons residing in the project area; (5) businesses owned by persons providing a negotiated employment level greater than 30% of total project staffing to Section 3 persons; (6) businesses who commit to directly conduct or to subcontract professional employment readiness and employment trade skills training related to the project work or other in-demand employment

⁵ See HUD, *Opportunity Now*, *Hud.gov*, <https://opportunityzones.hud.gov/>.

disciplines, at a minimum of 10% of their total contract award, plus or minus change orders, to Section 3 persons. Under (1), (2), (5), and (6), there is a priority order for the Section 3 persons as well: (A) Public housing assisted persons at the property where the work is being executed. When a contract is issued for service work covering multiple properties of the PHA, any public housing person from that PHA's portfolio shall compete equally for any opportunities created as a direct result of the expenditure. (B) When the service contract only covers one public housing property, the persons from that property will receive first priority for opportunities and then persons from other properties of the PHA's public housing portfolio will be secondly considered. (C) Housing Choice Voucher holders of that specific housing authority that administers that voucher will be third priority. (D) Persons residing in any project-based Section 8 property owned in whole or in part by that PHA. (E) Current YouthBuild participants. (F) All other low- and very low-income persons within the legal boundaries of the service area of the project.

HUD Response: HUD appreciates all the different options provided by commenters. However, HUD believes the final Section 3 business concern definition provided in this final rule provides a balance that is consistent with the statute and ensures that most Section 3 business concerns are in fact aimed at employing low- and very low-income persons. See responses above for additional discussion of the Section 3 business concern definition.

Small PHA Reporting

Support

Some commenters supported reporting flexibility for small PHAs, and especially the removal of the non-construction contract goal of 3 percent of all covered contracts to Section 3 business concerns, which they said is challenging to meet due to the amount of professional service contracts. One commenter suggested that for consistency and clarity, the final rule should exclude all PHAs with 250 or fewer units from reporting on benchmarks, regardless of procurement cost. The commenter also suggested that since the proposed rule exempts Section 8 funding from having to meet Section 3 requirements, the final rule should clarify the definition of a small agency for the purposes of Section 3 reporting to mean an agency with 250 or fewer public housing units. Another commenter recommended defining

"small PHA" in a way that alleviates regulatory burdens for as many agencies as possible and suggested defining small PHA as those having 550 or fewer combined public housing and Section 8 units; or, as Section 8 funding is not covered by Section 3, utilize a 250 unit threshold.

Another commenter supported the small PHA reporting exemption suggesting that HUD should define a small PHA in a way that would maximize the number of agencies exempted from detailed reporting, recommending 550 combined units (consistent with the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 and the Housing and Economic Recovery Act of 2008) or 250 public housing units (as Section 8 assistance is not covered by Section 3).

HUD Response: HUD continues to support the Small PHA reporting provision in the proposed rule. Small PHAs with less than 250 public housing units will not be required to report the number of labor hours and instead will be required to report their qualitative efforts. The final rule does not require a commitment to award at least 3 percent of the total dollar amount of all other Section 3 covered contracts to Section 3 business concerns. HUD currently is also not changing the number of public housing units for determining the Small PHA exception.

All PHAs Should Report for Data Collection and Compliance

Some commenters recommended that all PHAs, regardless of size, should be required to report for data collection and compliance. Other commenters specifically objected to the labor hours reporting exemption for PHAs with fewer than 250 housing units, because inexpensive software is available for PHAs to track and report labor hours. Other commenters suggested removing all exceptions for PHAs. Additional commenters elaborated that reporting requirements should be the same for all entities with no exceptions, noting that every recipient and every dollar should be included in order to guarantee that opportunities reach the poorest and smallest communities.

Commenters noted that small PHAs should not be exempt because they could have significant contractor and subcontractor activity in any given year. Specifically, one commenter noted that the \$200,000 threshold should apply to small PHAs because they have the same opportunity to create jobs as other entities. Another commenter noted that not requiring small PHAs to report creates a loophole that hinders opportunity.

HUD Response: HUD has heard from small PHAs that they do not receive enough funding or have sufficient pools of Section 3 workers to support annual new hire or labor hour reporting. Close to one-half of small PHAs with less than 250 public housing units receive less than the \$200,000 project threshold applicable to Section 3 projects that receive other HUD assistance such as CDBG and HOME funding. Due to Operating Fund shortfalls, small PHAs can take advantage of the authority under section 9(g)(2) of the United States Housing Act of 1937 to use its Operating and Capital Funds flexibly to fund any eligible activities under either funding stream. Some small PHAs compensate by promoting economic opportunities through referrals of residents to employers and job fairs, providing training facilities and offerings, and other local efforts. To recognize these other activities and the generally low amount of funds available or used for capital projects, small PHAs will report qualitatively on their efforts.

No Good Faith Assessment for Small PHAs

Some commenters objected to allowing small PHAs to supply a "good faith" assessment of hours worked because doing so would invite those entities to bypass important tracking requirements, suggesting that HUD should require quarterly, instead of annual reporting.

HUD Response: The small carve out for good faith assessment is not limited to small PHAs. As stated in the proposed rule, it is a limited exception where PHAs and other recipients of public housing financial assistance could use the reporting of a good faith assessment of the labor hours of a full-time or part-time employee from contractors and subcontractors that have not been subject to requirements specifying time and attendance reporting, and do not have systems already in place to track labor hours. This is to address employers that do not already track labor hours without making changes in time and attendance or payroll. It is not a permanent exception and if in the future the contractor or subcontractor is required to track labor hours under some other authority, or begins to voluntarily track labor hours, the exception would no longer apply.

Qualitative Reporting

Another commenter noted that the rule lacks information on what qualitative reporting will be required of small PHAs to substantiate the claim that such reporting will be less

burdensome and recommended that small PHAs have the option to track labor hours or do qualitative reporting.

HUD Response: The rule seeks not to be too prescriptive on qualitative reporting to provide small PHAs with the flexibility to report on a range of activities. HUD is considering some of the following to signify qualitative efforts: Outreach efforts to generate job applicants who are Targeted Section 3 workers; direct on-the-job training (including apprenticeships); indirect training such as arranging for, contracting for, or paying tuition for, off-site training technical assistance to help Section 3 workers; and outreach efforts to identify and secure bids from Section 3 business concerns. HUD plans to create a form for tracking and reporting qualitative efforts, to ease burden on recipients. HUD agrees that small PHAs should have the option of conforming to the more quantitative reporting standards and has modified the text to permit such option.

Dollar Threshold for Small PHAs

A few commenters also recommended use of a dollar threshold for public housing assistance similar to that used for other HUD assistance as a means to reduce reporting burdens on small agencies. One commenter suggested that using a dollar threshold, rather than a threshold based on number of public housing units, is a more practical and effective means of identifying those smaller projects that are less likely to generate significant Section 3 employment opportunities. Another commenter further suggested that thresholds established in the proposed rule for Community Planning and Development (CPD) should be applied across the board to all programs and noted that using a per-project or per-recipient threshold would more accurately exclude or include small PHAs based on funding. This commenter also suggested establishing a threshold for work-able non-working residents below which small PHAs would not have to report.

HUD Response: HUD continues to maintain that a dollar threshold for public housing financial assistance is not consistent with the statute. Section 3 applies to public housing operating, development, modernization, and management assistance, which covers virtually all housing authority projects and activities. HUD believes that the statute's expansive coverage of public housing projects and activities indicates that any attempt to diminish the coverage would be inconsistent with the statute.

Subcontractors

Several commenters noted that Section 3 requirements should not apply to subcontractors. Commenters stated that extending reporting requirements to subcontractors would discourage participation in PHA contracting opportunities, adversely impacting competition in the market, driving up construction costs and limiting economic opportunities. Other commenters added that HUD should consider ways to reduce administrative requirements on subcontractors wherever possible, echoing concerns that regulatory burdens which do not acknowledge subcontractor's practical limitations will discourage private sector partners from working with PHAs.

The commenters also suggested that regulatory relief for subcontractors could be achieved in a number of different ways, which range from exempting small subcontractors, excluding subcontractors from Section 3 obligations if their contracts are below a certain dollar threshold or below a percentage of the total covered funding on the Section 3 project. Commenters also suggested HUD consider limiting Section 3 obligations to the recipient, general contractor and immediate subcontractor(s), noting that relieving some or all Section 3 obligations on subcontractors may attract more high-quality tradespeople to affordable housing construction projects and possibly also lower the construction costs on Low Income Housing Tax Credit (LIHTC) and other affordable housing projects with covered HOME or CDBG funds.

Other commenters who expressed concerns about the reporting requirements for grantees and subcontractors also suggested thresholds for subcontractor reporting. Some commenters suggested retaining the existing \$100,000 threshold, though one commenter recommended a reduced compliance level, allowing subcontractors to track Section 3 employees instead of labor hours, to reduce the administrative burden on small entities who lack the capacity to track hours. Some commenters suggested a reporting requirement threshold of \$250,000 to align with the OMB procurement threshold, one of whom recommended this threshold also apply to contractors and offered the \$10,000 micro purchase threshold as an alternative. Other commenters suggested a compliance threshold of \$200,000.

A number of commenters supported reporting requirements for both contractors and subcontractors. One

commenter recommended excluding second tier and below subcontractors from requirements, noting that large PHAs are more likely to award or fund multimillion-dollar projects that have more than 25 first-tier subcontractors. Two commenters mentioned the role of contractors simplifying the reporting mechanism for subcontractors and encouraging subcontractors to comply with requirements. One commenter also suggested that the funding recipient should be allowed to decide the extent of the Section 3 reporting requirements for subcontractors.

One commenter requested clarification as to how Section 3 requirements "flow down" to contractors and subcontractors for housing and community development financial assistance, noting the current regulation includes references to recipients as well as contractors and subcontractors when describing numerical goals and hiring/contracting preferences. The commenter went on to state that Subpart C of the Proposed Rule references only the recipient when describing the employment, training and contracting requirements and safe harbors, and removes the \$100,000 contractor and subcontractor threshold in the current regulation for triggering Section 3 requirements. The commenter noted that while the Proposed Rule does mandate that each recipient "require subrecipients, contractors, and subcontractors" to meet the hiring/contracting requirements, they would propose a clarification on the extent to which contractors, subcontractors and subrecipients on Section 3 projects are bound by the requirements.

HUD Response: HUD is sensitive to the potential burden that Section 3 compliance may impose and has focused on outcomes, allowing the recipient to direct where the recipient's efforts, and its contractors' and subcontractors' efforts, will have maximum effect.

In the statute, the sections addressing public housing programs specifically include "contractors and subcontractors" in Section 3 requirements. In contrast, the statute does not reference "subcontractors" in the sections addressing other covered housing and community development assistance. Section 3's applicability to subcontractors as set forth in this final rule closely tracks the statute's requirements, however, focus on outcomes, deferring to the recipient to focus their efforts for maximum impact with respect to Section 3, and aligning the contractual obligations the recipient imposes on contractors and

subcontractors accordingly. Unlike the current rule, which applies Section 3 compliance to all subcontractors in excess of a \$100,000 contract threshold, the final rule does not apply specific Section 3 reporting obligations to any subcontractor and instead such requirements would stem from the recipient. See § 135.3(a)(3)(ii)(B). The proposal to reinstate the \$100,000 contract size threshold or any alternative threshold would limit the recipient's flexibility to determine how to achieve the "greatest extent feasible" standard most effectively. Similarly, subcontractors are excluded from the contract language provisions in Section 75.27(a), but subcontractors are still required to meet Section 3 requirements in Section 75.19, which provides the recipient flexibility to achieve the goal. The rule implements the suggestion provided in the comments that the recipient be allowed to decide on the extent of the Section 3 reporting requirements for subcontractors where the statute does not constrain HUD from providing this flexibility.

Definition for "neighborhood" or "service area"

Some commenters supported the proposed definition, stating that the definitions are reasonable and will simplify compliance. Other commenters accepted only the one-mile radius definition of "service area" or "neighborhood," but suggested that HUD eliminate the population requirement given the impact on rural areas.

Some commenters disagreed with the proposed definition, stating that metrics will be skewed based on close proximity to more affluent areas. Another commenter thought the definition is inconsistent with the statutory intent to encourage employment opportunities among low- and very low-income persons, noting a single definition cannot capture the expansive geographic areas. Another commenter noted the definition will actually limit mobility and the long-term success of resident programs because contracts will not provide opportunities to residents in successive projects in different neighborhoods. Some commenters wrote that the definition limits businesses in diverse economies and in high-cost cities that need more flexibility to recruit. One commenter wrote that this new definition would significantly reduce the labor pool of eligible Section 3 new hires, making it difficult to achieve benchmarks. Other commenters wrote that it may exclude local public housing or Section 8 residents. Another commenter thought

that it would add challenges for contractors in identifying and prioritizing eligible workers.

Other commenters noted that the restriction does not account for Section 3 covered projects in areas that are not low-income, such as some CDBG expenditures. In addition, commenters noted that such a limitation could have the unintended consequence of excluding large groups of people from the pool of potential employees, especially in cities that are combatting racial segregation. Another commenter stated that the requirements are too geographically limited as to whom and where recipients/contractors must provide opportunities. Additionally, it does not account for opportunities that are accessible beyond the prescribed radii by using mass transit and other commuting opportunities.

Some commenters noted that a new definition would add unnecessary administrative burdens which increases the cost of program management and compliance. One commenter wrote that determining how to meet a 5,000-person radius would be burdensome. Other commenters wrote that completing data analysis of employee home locations and certification would be administratively burdensome and could be covered under state and local data privacy laws. In addition, a commenter stated that the definition may limit PHAs' abilities to hire individuals in their communities who would otherwise qualify as a Section 3 worker and stated that entities receiving community development funds are better at determining which individuals would benefit most from Section 3 employment.

Several commenters suggested that HUD retain the definition of "service area" as it exists in the current rule at 24 CFR 135.5. Another commenter supported Section 3 and encouraged the retention of flexible approaches to compliance, such as those outlined in 24 CFR 135.30. Any proposed rule changes should consider geographical and service population differences. The commenter supported maintaining the rule as is, noting it provides flexibility for compliance through training, hiring, or contracting. Similarly, another commenter noted that there should be flexibility and factors other than hours worked and earned to provide Section 3 credit.

HUD Response: HUD notes that the neighborhood or service area requirement applies to the prioritization of effort with respect to housing and community development financial assistance, not public housing funds. The hiring prioritization is different for

this category of funding, and pursuant to the statute is focused on residents of the geographic area in which the work is being done, not on the rent-assisted status of the workers. Consequently, in this context, HUD is not adjusting the regulatory text to acknowledge the availability of transit or to prioritize employment of low- and very-low-income people from a broader geography.

The rule seeks not to limit the labor pool available within specific geographic areas, but to allow flexibility for smaller and more rural areas through the definition. HUD believes counting individuals who live within one mile of the worksite and within an expandable circle centered around the worksite that encompasses 5,000 people provides a definitive means of determining who counts as a Targeted Section 3 worker within the service area or the project neighborhood. Where the one-mile radius circle centered around the worksite has less than 5,000 people, the radius would be expanded outwardly to achieve the desired population of 5,000 people. This expansion would address many of the commenters' concerns regarding smaller communities or rural areas. For the benefit of densely settled urban areas, HUD recognizes there may be more than 5,000 people, but will hold at the one-mile geographic diameter.

HUD believes this final rule does take into consideration geographical and service population differences and retains flexibility for compliance through training, hiring, or contracting. Additionally, the rule is meant to streamline the Section 3 process to make it consistent with the statute and easier to implement. Compliance can be evaluated qualitatively if the labor hours benchmark cannot be met. Under this rule, both measurements are permissible, and the requirements for qualitative evaluation are laid out in the rule. In addition, HUD intends to create a web-based tool to support recipients, subrecipients, contractors, and subcontractors in determining the geographic area encompassing Targeted Section 3 workers.

Allow Grantees To Define "Neighborhood" or "Service Area"

Commenters recommended that grantees be given the ability to define "service area" for themselves. Another commenter urged HUD to adopt something other than a "one-size-fits-all" approach so that small rural counties would not have difficulty utilizing federal funding. One commenter noted for example that in New Orleans, there are clearly defined

neighborhoods that most residents and officials understand and recognize, some having a larger area than a one-mile radius. The commenter stated that allowing for a more localized definition of 'project area,' rather than using HUD's definition of a one-mile radius or 5,000 person population guideline, increases local participation in projects that impact those individuals and their immediate surroundings and makes the most sense for their community. This commenter stated that recipients should be able to define their geographic size for purposes of how they focus their priorities regarding low-income persons residing within the service area or neighborhood in which the project is located, and communicate their determination to sub-recipients, contractors and subcontractors. Another suggestion was to have localities work with their local HUD office to define service area based on the locality's characteristics.

Commenters suggested that HUD allow residents and businesses from anywhere in the state to receive priority consideration or to give state recipients deference in establishing areas for purposes of meeting Section 3 requirements. Additionally, one commenter stated that service area may change based on project type, some serving entire communities while others serve smaller sections of a community, rendering the one-mile radius inapplicable depending on the project's scope of impact.

The commenters noted that limiting preference to a certain "service area" may have the unintended consequence of excluding large groups of people from the pool of potential employees. The commenters proposed allowing localities to either target job opportunities to low-income hires from anywhere within the locality, or work with their local HUD offices to define appropriate service areas based on the characteristics of the locality. One commenter wrote that the one-mile radius is too limiting and that residents within the community should be considered.

Some commenters suggested that HUD define service area to be "the area within or contiguous to a PHA's jurisdictional boundaries." Other commenters suggested that HUD define "service area" or "neighborhood" in the following tiered manner: (1) PHA residents in project area; (2) Section 3 residents in project area; (3) extremely low-income or homeless individuals in project area; (4) YouthBuild in project area; and (5) next closest PHA in project area.

One commenter suggested that HUD should give preference to eligible residents of the neighborhood surrounding the PHA before other residents of the metropolitan area and should utilize the language in Subpart C § 75.19 reading "Section 3 workers residing within the service area or the neighborhood of the project." One commenter stated that Section 3 Employment Priorities, as written, is very clear as to the order of Section 3 applicant priorities, starting with residents in closest proximity to the construction project, but disagreed that the one mile and 5,000 population radius is an appropriate geographic, using two PHA examples of Cayce Place and Edgehill to show that these metrics would be skewed based upon the close proximity to those earning twice the AMI and with property values in the hundreds of thousands of dollars.

HUD Response: As noted above, the neighborhood or service area requirement applies to the prioritization of effort with respect to housing and community development financial assistance, not public housing funds, and the focus in this context is on residents of the geographic area in which the work is being done. HUD believes that its proposed framework of counting individuals who live within one mile of the worksite and within an expandable circle centered around the worksite that encompasses 5,000 people provides a definitive means of determining who counts as a Targeted Section 3 worker within the service area or the neighborhood of the project. HUD believes the proposed Section 3 regulation takes the varied geographical areas into account and provides a streamlined framework that more specifically determines who might benefit from employment and training opportunities available within the area surrounding a Section 3 project. Where the radius or circle centered around the worksite has less than 5,000 people, the radius would be expanded outwardly to achieve the desired population of 5,000 people. All Targeted Section 3 workers identified by the geographic radius must also qualify as Section 3 workers, so this would not include higher-income workers within the neighborhood or service area.

Rural Areas and Contractors

Several commenters noted concerns about the effect of the proposed "service area" definition on Section 3 implementation in rural areas. One commenter stated it would be unrealistic and burdensome for employers in rural areas to administer and monitor the one-mile radius, and

that it does not reflect the realities of construction employment in small rural states where the service area is the entire state. One commenter also stated that in areas of low population density, there often will not be sufficient residents or businesses that are capable of performing the work required for housing and community development projects. Other commenters wrote that, given chronic and widespread labor shortages, it is inadvisable to have such a small geographic restriction on the labor pool of Section 3 workers.

Other commenters accepted the one-mile radius definition of "service area" or "neighborhood," but stated the 5,000-person population radius is too large for rural areas. Another commenter noted that the population threshold could increase the service area size exponentially in cities and counties where the population is less than 5,000.

One commenter in Utah opposed the proposed definition, arguing that changing the definition of "neighborhood" to 5,000 people would not work because of the state's very large rural geographic area. The commenter stated HUD's determination that most (77%) current CPD projects had a population of 5,000 people within one mile of the project site is not applicable in Utah, which has only 29 counties. The commenter detailed that 70% of Utah's population resides in its 4 urban counties, and Utah's CDBG projects are part of the 23% that do not have 5,000 people within a one-mile radius of a project site.

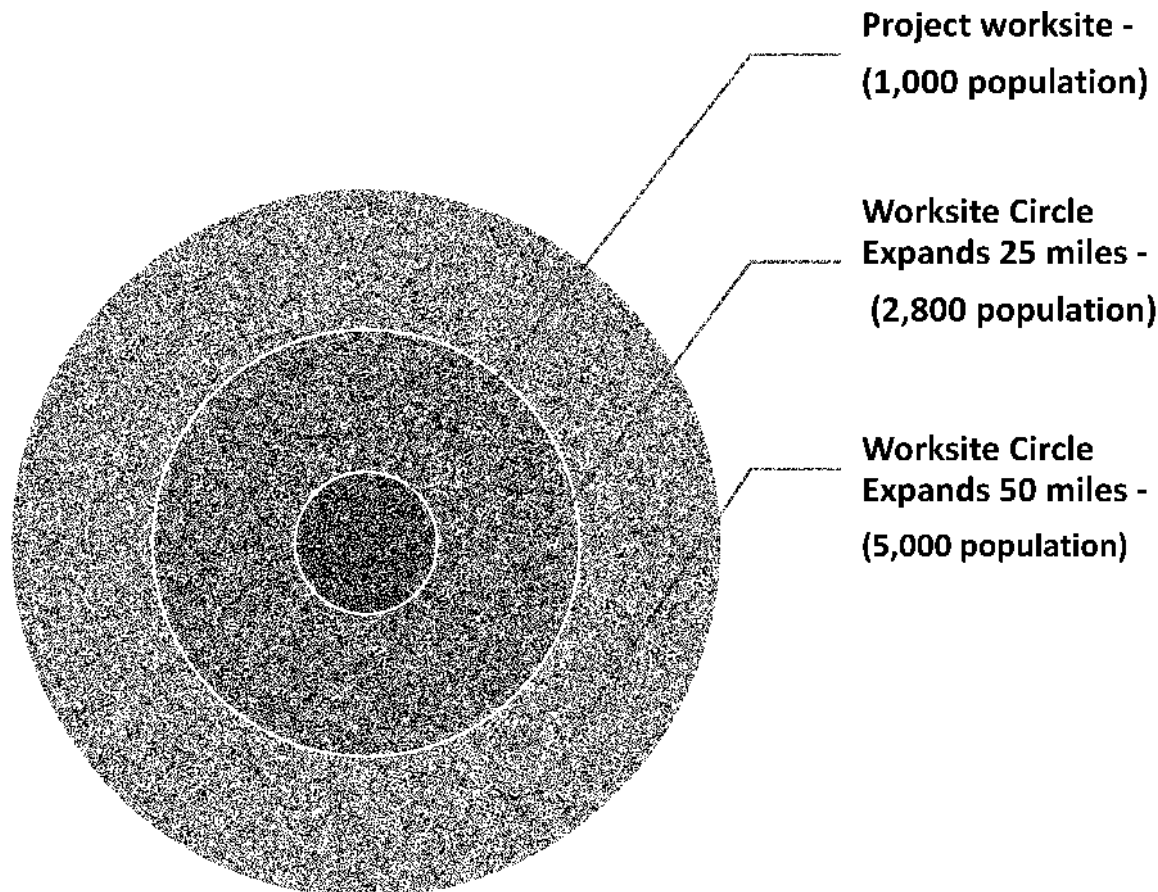
One commenter mentioned the impact of the proposed definition on small contractors or those outside the immediate service area, noting that CDBG and HOME funds are often financing projects completed by small contractors who need to travel outside of a service area to complete work on a project. Another commenter rejected the proposed definition, suggesting that for small town jurisdictions, the "service area" or "neighborhood" should apply within the recipient's jurisdiction, which may be an entire county. One commenter mentioned that finding Section 3 contractors or businesses is already challenging and should not be limited by a "service area" or "neighborhood" definition.

HUD Response: HUD acknowledges and has carefully considered the concerns of commenters representing small and rural areas regarding the proposed definition of neighborhood/service area. As previously stated, HUD supports the proposed framework of counting individuals who live within one mile of the worksite and within an expandable circle centered around the

worksite that encompasses 5,000 people. This concept was designed specifically to address the unique needs and challenges facing rural and small

communities. The graphic provides an example on how a circle centered around a worksite with fewer than 5,000 people may be expanded until the

desired population goal of 5,000 people is met or eligible Targeted Section 3 workers are counted.



Above: Graphic depiction showing how the one-mile radius can be expanded where there are fewer than 5,000 people until the 5,000-person population is found.

The text as written will provide a definitive means of determining who counts as a Targeted Section 3 worker within the service area or the neighborhood of the project. HUD believes the proposed Section 3 regulation takes the varied geographical areas into account and provides a streamlined framework that more specifically determines who might benefit from employment and training opportunities available within the area surrounding a Section 3 project. HUD also notes that over time, as outcome results are reported to HUD, the benchmarks may be tailored to certain types of projects and geographies by notice, with the explicit intention that it may be appropriate to set different benchmarks for rural areas given the

availability of labor and the patterns of contracting work in rural areas.

Web Tool

Some commenters noted that HUD's proposal to provide a web tool to aid in the process of determining a geographic service area would be helpful. One commenter urged HUD to provide the proposed web tool that will help determine the geographic area that encompasses Targeted Section 3 workers before it proceeds with the current definition and finalizes the rule. Commenters requested that HUD provide it to state and local recipients, sub-recipients, contractors, and subcontractors for testing before implementation. Though encouraged by the prospect of a web tool to help determine the geographic area that

encompasses Targeted Section 3 workers, some commenters still argued for a broader definition and geographic areas that define Targeted Section 3 workers. Some commenters thought the web tool would not alleviate burden from the contractor that would still need to determine if a worker meets the requirements to be in the geographically defined area.

HUD Response: HUD agrees with the suggestion to provide a web tool to aid in the process of determining a geographic neighborhood/service area. As stated in the proposed rule, HUD will create and provide this tool at the issuance of the final rule to aid recipients, subrecipients, contractors, and subcontractors to determine the geographic area that encompasses Targeted Section 3 workers under this

definition. HUD will also explore the option of creating a mobile tool to help recipients with monitoring and compliance determinations.

Exceptions

Commenters suggested the proposed definition should not apply to Puerto Rico considering its geographic composition.

HUD Response: HUD has decided to retain the proposed definition for all recipients, including Puerto Rico. HUD believes the proposed regulation takes the varied geographical areas into account and provides a streamlined framework that will enable eligible workers to benefit from employment and training opportunities available within the area surrounding a Section 3 project.

YouthBuild Participants

Some commenters were in favor of or not opposed to expanding the definition to include previous YouthBuild workers that are under 24 years of age and those who are still eligible to participate in YouthBuild but may have graduated out of the program. One commenter was opposed to expanding the definition on the grounds that it would require onerous and complex background checks and research to determine whether a participant meets the alternate definition. One commenter recommended that the definition be changed to include previous YouthBuild workers who successfully graduated from the program and are either under age 24 or are otherwise still eligible for YouthBuild programs. Other commenters proposed that the definition of YouthBuild participant should be as broad as possible, regardless of age, while other commenters proposed the definition to include other programs which teach relevant skills, such as Service and Conservation Corps participants and graduates, participants/graduates of “pre-apprenticeship” training programs, participants/graduates of “youth corps,” VFW Local Program participants, and AmeriCorps participants.

HUD Response: HUD appreciates the commenters’ support of the YouthBuild program, and after careful deliberation, has decided to keep the definition consistent with the current regulations and current YouthBuild participants. See 29 U.S.C. 3226; 24 CFR 135.5. HUD determined that given the work required to certify current YouthBuild workers, that adding a longer-term duration would create an additional paperwork requirement on both the person claiming the status and the entity reporting the status. It may also cause

confusion using a certain period of time. Additionally, a YouthBuild worker can still qualify for 5 years if they are employed at the end of their YouthBuild experience.

Applicability and Scope

One commenter supported the rule’s change to applicability. Another commenter supported Section 3 as an important mechanism to strengthen communities, reduce poverty, and increase residents’ economic self-sufficiency. One commenter proposed that these rules should apply to all developers, contractors, and sub-contractors; all professional, skilled, unskilled, technical, and consulting service contracts compensated partially or fully by HUD funds—no exceptions. Another commenter suggested these rules shall be applicable to all professional, skilled, unskilled, technical, and consulting service contracts line items.

Other commenters suggested that HUD should clarify that owners and managers of HOPE VI, Choice Neighborhoods and Mixed-Financed Developments are subject to Section 3 Hiring and Contracting requirements in their own operations and should extend this requirement to Rental Assistance Demonstration (RAD) converted projects. One commenter supported HUD’s separation of PHA requirements from non-PHA requirements because it did not make sense for non-PHAs to follow regulations intended for PHAs.

A commenter supported HUD’s clarification regarding Section 3 applicability to projects receiving HUD assistance of \$200,000 or greater. Another commenter warned that this rule states that Section 3 will apply when the amount of HUD assistance is greater than \$200,000 on a per-project basis, which would potentially exempt projects where the HUD funding is less than \$200,000, even though the combined total funding is much higher, leading to a decrease in number of projects subject to Section 3.

One commenter suggested that PBV and PBRA contracts should be exempt from Section 3 compliance. Another commenter suggested that, rather than a per-project basis, it would be simpler to apply Section 3 to individual contracts for housing and public construction funded with HUD assistance.

HUD Response: HUD shares the view that Section 3 is an important mechanism to strengthen communities, reduce poverty, and increase economic self-sufficiency. HUD seeks to focus Section 3’s applicability where it can have a real impact, and to exempt from Section 3 those cases where

applicability imposes burdens not commensurate with outcomes. HUD has concluded that in certain circumstances, particularly professional services, there are very few opportunities for Section 3 outcomes. The proposed definitions defined the scope of programs subject to Section 3 requirements but did not expand such coverage beyond what HUD’s existing regulations already required for compliance. HUD proposed the \$200,000 threshold for housing rehabilitation, housing construction and other public construction projects because work below that amount would likely not trigger long-term employment opportunities for which the recipient could show measurable labor hours. HUD disagrees that Section 3 should be applied to all types of work, without exception, and reaffirms in the final rule the exception for professional services. The proposed rule does, however, give credit in the reporting for opportunities that are created in the professional services context by including professional services labor hours in the numerator, and not in the denominator, of the reported outcome ratios. The final rule applies Section 3 in a manner consistent with the statute. HUD has determined that monthly rental assistance payments, such as those provided under Section 8 project-based voucher or project-based rental assistance housing assistance payment contracts, are not covered by the statute. Properties converted to Section 8 rental assistance through the RAD are covered by the rules applicable to Section 8. However, the RAD governing notice does apply Section 3 requirements to those activities occurring after the date of the RAD conversion which are contractually obligated as part of the RAD conversion.

Employment Priorities § 75.9 / § 75.19

Some commenters supported separating the agencies which fund Section 3 projects from PHAs and mirroring the statute. Other commenters felt that the priorities should be the same for both Section 3 projects and PHA financial assistance. Other commenters suggested that HUD give preferences to certain groups, while other commenters thought HUD should consider adding geographic considerations into the definition. One commenter suggested that the last priority level should be expanded to any person if the PHA can reasonably demonstrate there are not sufficient Section 3 residents with the requisite job skills within a project’s geographic area. Commenters also asked HUD to clarify that otherwise eligible workers of PHAs, even if under private

management, are included in this category, as well as recipients of Section 8 assistance or voucher assistance residing in properties managed by other entities. One commenter suggested HUD change the regulatory language to insert the word “priority” in § 75.19 to clarify the requirement and make the sections consistent with § 75.9.

HUD Response: HUD appreciates the comments that supported the employment prioritizations. These prioritizations follow the statutory prioritizations, and HUD is including that language for clarity for recipients implementing the regulations. HUD has rephrased § 75.19 to include the word “priority,” consistent with the language of the statute. While HUD appreciates the alternative suggestions, these regulations are meant to streamline the Section 3 process to make it consistent with the statute and easier to implement. HUD believes that the existing regulatory text does that and is making no changes to this section. HUD, however, encourages the HUD financial assistance recipients to consider all the diverse suggestions provided when working on outreach to persons who are low- and very low-income persons to meet the Section 3 benchmarks including residents of PHAs under private management such as those residing in a mixed-finance development project.

Reporting § 75.15 / § 75.25

Consolidated Plan Regulations

A commenter recommended that the Consolidated Plan regulations at 24 CFR 91.520(a) be amended to specifically include Section 3 reporting; PIH will need to develop a Section 3 reporting format.

HUD Response: HUD will review Department-level strategies on how to effectively incorporate Section 3 reporting into current systems and data collection tools, including the Consolidated Plan. As a result, HUD will issue sub-regulatory guidance on reporting per program area and provide technical assistance to recipients for Section 3 compliance.

Systems

A commenter warned that HUD will need to modify IDIS to allow CDBG and HOME recipients to report on their Section 3 actions annually because CDBG and HOME recipients will report on their Section 3 actions in IDIS using a similar form as HUD Form 60002 that has been modified to capture labor hours worked. This commenter stated that this move will eliminate

redundancy and ease the administrative burden for grantees.

HUD Response: HUD agrees that the Integrated Disbursement and Information System (IDIS) and DRGR should be modified to ensure accurate Section 3 compliance reporting for CDBG and HOME recipients. HUD will also adjust our data collection systems as necessary to ease administrative burden for grantees and to eliminate redundancy.

Report Through Action Plan and/or CAPER and Effective Date

A commenter supported HUD’s effort and recommended reporting through the Action Plan and/or the Consolidated Annual Performance Evaluation Report (CAPER), only on completed projects. One commenter recommended that the final rule be effective for funds granted in the next Federal fiscal year after publication of the final rule so there is time for contracts/written agreements with sub-awardees to be amended, and in order to avoid having CAPER reporting requirements from annual federal years with two separate program requirements.

HUD Response: HUD supports efficient and effective Section 3 compliance reporting through current mechanisms, such as the Annual Action Plan and/or CAPER, for applicable HUD programs. As stated in the proposed rule, HUD believes that requiring reporting annually, but consistent with timeframes that PHAs and other recipients of other housing financial assistance are already using to submit documents to HUD, will relieve existing burden. HUD may also look into reporting into other existing systems rather than requiring PHAs and other recipients to log into and report under a separate system, such as the existing SPEARS.

Double Counting

A commenter stated that reporting responsibilities when multiple government agencies provide HUD CPD funds are unclear and requested HUD determine whether agencies will be responsible for reporting outcomes for each federal investment or whether HUD will prevent double counting by limiting reporting to one funding agency per Section 3 project.

HUD Response: Section 75.29(b) specifies that when there is funding from multiple programs that exceed the threshold in § 75.3(a)(2), the recipient will report to the applicable HUD program office. Some HUD systems allow for indicating when there are multiple HUD funds so that reporting can be limited to one system. However,

not all HUD systems provide for that type of designation. HUD will provide additional guidance to recipients that have multiple funding sources on the proper process for reporting Section 3 project completion.

Separate Reporting by Funding Source

One commenter requested HUD clarify whether PHAs will still be required to report separately by funding source (e.g., Operating Funds and Capital Funds) or whether the hires report will be aggregated to report only on PHA total funds. This decision will impact how PHAs currently collect and track Section 3 hires. A commenter supported elimination of separate reporting on contracting with Section 3 business concerns. Other commenters stated that the reporting and monitoring required to remove professional services labor hours from overall labor hours would add additional administrative burden to PHAs and could prove challenging in the overall reporting process.

HUD Response: Under the final rule, for non-MTW agencies, reporting initially will remain at the grant or individual program level, but HUD may explore agency-level reporting where possible to streamline and simplify. PHAs will still be required to report by separate funding source or in the aggregate for MTW agencies. For ease in administration, the rule will provide separate definitions for these types of funding and separate subparts relating to: (1) Public housing financial assistance, which covers (a) development assistance provided pursuant to Section 5 of the United States Housing Act of 1937 (the 1937 Act), (b) operations and management assistance provided pursuant to Section 9(e) of the 1937 Act (Operating Fund), and (c) development, modernization, and management assistance provided pursuant to Section 9(d) of the 1937 Act (Capital Fund); and (2) Section 3 projects, which means housing rehabilitation, housing construction and other public construction projects assisted with HUD housing and community development assistance when the amount of the assistance to the project exceeds \$200,000, or \$100,000 where the assistance is from HUD’s Lead Hazard Control and Healthy Homes programs. There are no current plans to aggregate the information or eliminate reporting on contracting with Section 3 business concerns. Small PHAs with less than 250 public housing units will be permitted to report qualitatively. HUD is exploring how best to implement qualitative reporting for small PHAs, and as indicated above

may study whether other reporting methods should be contemplated in the future. As stated in the final rule, HUD believes that tracking labor hours consistent with existing tracking for prevailing wage requirements would reduce burden on recipients. HUD also believes that tracking labor hours will better allow HUD to determine if long-term employment opportunities are being generated.

Exempt Commodity Purchases, Non-Construction, and Professional Services

Commenters strongly agreed with the change to exempt both commodities purchases (material supply contracts) as well as professional services (contracts for legal, accounting, financial consulting, environmental assessment, A&E services and other professional services) from the calculation of contract dollars and new hires for reporting. One commenter supported exclusion of Section 3 requirements on non-construction professional services (e.g., legal, accounting, and engineering) but has concerns that not all Section 3 workers want careers in the construction field and some employment is generated in non-construction contracts.

HUD Response: The final rule maintains the exemption of material supply contracts and maintains the structure presented in the proposed rule which does not require separate reporting of contracting with Section 3 business concerns. HUD is providing clarification on the exemption for professional services in the definition of “professional services” in this final rule, by defining professional as services that require an advanced degree or professional licensing.

HUD acknowledges that many low-income workers seek employment in jobs other than construction. However, data indicate that there are relatively few opportunities for Section 3 hiring in professional services fields such as legal services and civil engineering. Many of the positions within these professional services fields require specialized degrees and in many cases the hiring is not directly tracked to a specific federally funded project or activity. The reporting structure in the rule allows a recipient to count as Section 3 labor hours and as Targeted Section 3 labor hours any work performed by a Section 3 worker or a Targeted Section 3 worker (i.e., in the numerator of the calculation), even when the professional services as a whole are not counted in the baseline reporting (i.e., in the denominator of the calculation). The effect of this reporting structure is to give a recipient a bonus if they are able

to report Section 3 hires in the professional services context.

Frequency of Reporting

Commenters stated that annual reporting does not facilitate capture and correcting of non-compliance. Some commenters recommended all PHAs should provide Section 3 reports quarterly instead of at the end of the fiscal year. Another commenter recommended that reporting should be done on a monthly basis.

One commenter strongly supported a return to annual reporting and integration of reporting with other funding program reporting requirements. Another commenter supported annual reporting for reducing administrative burden of more frequent reporting. Another commenter supported the proposed change to annual reporting on projects completed within the reporting year.

HUD Response: The reporting requirements represents a balance between frequent reporting, effective reporting, and administrative burden. Frequent reporting allows HUD to keep a closer eye on compliance, and early oversight can result in identification of non-compliant actors when there is still opportunity to influence change. Frequent reporting also risks identifying as non-compliant those endeavors where the Section 3 opportunities are sequenced later in the effort’s timeline, resulting in ineffective reporting. This is often the case in construction efforts that begin with heavy machinery work and end with trades where Section 3 opportunities are more commonly created. Additionally, there is an administrative burden for the reporting entity, and an oversight responsibility for HUD, each time Section 3 reports must be submitted. HUD notes the variety of opinion represented in the comments, with suggestions of monthly, quarterly, and annual reporting, as well as the project-based reporting permitted in the proposed rule. HUD has determined not to revise the rule. As a result, reporting is on an annual basis for ongoing endeavors such as PHA operations or multi-year infrastructure or disaster recovery efforts. For discrete projects such as development of a singular multifamily apartment building, the reporting is on a project basis, and reported to HUD in the recipient’s annual report corresponding to the year of the project’s completion. Acknowledging the value of early intervention, the final rule also shifts oversight of Section 3 from a centralized HUD office, which typically does not have visibility into whether the funding recipient is embracing and effectively

implementing its Section 3 obligations, to the program office which is in regular communication with the funding recipient. Part of HUD’s intention with respect to this shift in oversight is to integrate discussions of Section 3 compliance into regular oversight discussions so that there are opportunities to influence improvement in Section 3 performance on an ongoing basis.

Submission Timing

Commenters recommended that HUD should provide further guidance on how and when annual reports will be submitted and stated that meeting the current January 10th deadline is a challenge for PHAs because end-of-year hires may be undercounted because paperwork may still be in process in January. Commenters stated that if the new regulations require reporting consistent with the timeframes that PHAs are already using, it will assist PHAs in providing the most accurate and up-to-date information. The commenters recommended that HUD refine the proposed reporting frequency regulations to read: “recipients must report annually after the end of their reporting year to HUD . . .” and HUD should provide PHAs 90 days from the end of their reporting year to have sufficient time to collect and aggregate data.

Another commenter noted that MTW PHAs provide annual reports based on the past fiscal year and updating the system to include such Section 3 reporting would be easier to use. This commenter also noted that it needs to be clarified how the reporting would deal with differing timelines for annual reporting versus the duration of projects with funds triggering Section 3 reporting.

HUD Response: As noted above, HUD will issue sub-regulatory guidance on reporting by program area. HUD anticipates that it may be able to integrate Section 3 reporting into the funding recipients’ other, programmatic, reporting structures, which already have existing time frames for submission of reports. The rule does specify that reporting is based on the recipient’s fiscal year, which language has not been changed. Section 3 requirements may not be waived by MTW agencies. MTW only provides flexibility for requirements promulgated under the 1937 Act, while Section 3 is a provision of the Housing and Urban Development (HUD) Act of 1968. Since HUD has a specific online system to collect Section 3 data—SPEARS—all PHAs, including MTW agencies, should report into that system. HUD will consider providing

training specific to MTW agencies, in addition to training for a more general audience, on how to use the SPEARS system.

Major Construction Project Administrative Burdens

Commenters warned that large workforces and the use of multiple subcontractors on major construction projects would lead to heavy administrative burdens which may discourage subrecipients or contractors from bidding. These commenters recommended contractors be allowed to self-certify to relieve administrative burdens.

HUD Response: HUD appreciates the commenters' concerns but determined that self-certification would not provide HUD with an adequate compliance oversight mechanism. There is no provision in the rule for self-certification of meeting the benchmark requirements.

Increasing Costs

One commenter stated that the requirements are already burdensome to their local governments, administrators, contractors and sub-contractors and the proposed rule would increase the burden, leading to fewer contractors willing to participate in CDBG projects, driving up costs, and leading to smaller projects and fewer beneficiaries. One commenter supported keeping reporting requirements to a minimum because both PHAs and HUD staff have limited capacity for reporting and providing constructive feedback.

One commenter stated the ability to identify workers individually rather than relying on the business concern to meet Section 3 definitions provides additional opportunity to demonstrate Section 3 compliance where there was none before, but this creates an additional burden to document safe harbor, particularly for Lead Hazard and Healthy Homes projects where a lower project dollar threshold is imposed. The commenter went on to suggest HUD consider providing additional funding for contractors to meet the financial impact of the paperwork burden of documenting compliance. Similarly, other commenters noted that under the previous rule the dollar threshold is zero, whereas under the proposed rule, despite the type of HUD funds received, every penny contracted, invested, or applied to any contract project, regardless of ownership, would have triggered full Section 3 compliance.

Commenters also expressed concern for the burden on contractors to meet hourly benchmarks while working through a pool of unskilled new hires

and potential costs to the owner if a new hire fails to meet job requirements. One commenter stated that a significant increase in Federal funding would be required to fund the increased administrative burden of the proposed rule. Other commenters stated that due to the lack of resources many PHAs have, HUD should ask for increased funding for public housing so that PHAs can sufficiently meet Section 3's intended goals. Commenters suggested HUD consider creating Section 3 technical assistance funding that can be used to build PHAs' technical knowledge and capacity.

HUD Response: HUD will continue to look for ways to reduce the impact of Section 3 reporting requirements using existing reporting and compliance systems that decrease administrative burden on recipients. HUD believes the use of labor hours, rather than new hires, will reduce costs as many construction contractors already track labor hours to meet prevailing wage requirements. This practice is proposed to provide a consistent labor hour tracking mechanism that will make compliance with Section 3 easier not only for recipients of HUD assistance, but also for contractors and subcontractors. HUD anticipates a reduction in reporting and recordkeeping burdens equal to approximately 64,270 hours, or \$2.4 million annually. This rule will not have any impact on the level of funding for covered HUD programs. Funding is determined independently by Congressional appropriations, authorizing statutes and regulatory formulas that set the amounts of Federal financial assistance provided by HUD grants. HUD is exploring ways to build upon ongoing Section 3 technical assistance and capacity building activities for recipients.

Disaster Recovery

A commenter warned that additional reporting requirements will be problematic for those managing disaster recovery and requested additional guidance for flexibility with the CDBG-DR program. Another commenter recommended HUD provide outreach and guidance on using CDBG-DR funds for job training and hiring initiatives during rebuilding efforts.

HUD Response: Reporting requirements already exist for reporting Section 3 compliance for CDBG-DR program activities. The proposed Section 3 rule will change the reporting scope, such as reporting hours instead of new hires. The rule, however, does not create additional reporting requirements. Like current practice, the

size of a grant award and project scope will dictate the length of time it takes to complete reporting. Technical assistance on using CDBG-DR funds for job training and hiring initiatives during rebuilding efforts, as well as other Section 3 topics, will be provided to grantees upon request and as part of the ongoing grant management process.

Reporting Should Be on Projects Underway

One commenter recommended CPD project reporting should be based on projects underway, not only those projects completed during the program year. The rule is unclear on how Safe Harbor is met for Section 3 projects, though Reporting § 75.25 states HUD requires a compilation of data through the recipient's fiscal year. Commenter recommends Section 3 compliance be measured by combining all workers for all Section 3 projects. If percentages of Section 3 workers and Targeted Section 3 workers are met, this will show intent to comply.

HUD Response: HUD believes that CPD project reporting should be based on those projects completed during a program year. HUD anticipates that CPD programs will continue to report on Section 3 through CPD's current data collection mechanism. At minimum, CPD programs are required to report annually, but many programs update status more frequently during a recipient's fiscal year. HUD intends to issue guidance on the Section 3 requirements and provide technical assistance on a program-by-program basis.

Special Oversight Role of States in State Programs

One commenter recommended that the proposed Section 3 rule be amended to acknowledge the special oversight role of states in State programs. The current Section 3 regulation provides guidance on this point, while the proposed rule fails to include such guidance. Any final rule should include such guidance. *See* 24 CFR 135.32(f) and 24 CFR 570.

HUD Response: HUD supports retaining the current proposed rule's language. HUD believes the proposed language does fully address the roles and responsibilities of Section 3 recipients and provides adequate guidance to implement, monitor, and enforce Section 3 requirements.

Qualitative Form

One commenter recommended that HUD should provide the form for qualitative reporting required of small

PHAs to allow commenters to provide informed feedback.

HUD Response: HUD will provide a form for Small PHAs and others to use for qualitative reporting when an entity does not meet the benchmark. The form will be issued consistent with Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and HUD will provide the opportunity for the public to provide comments on the form.

Recordkeeping (§ 75.31)

One commenter recommended moving § 75.31 to Subpart A where it would have general applicability to all recipients.

HUD Response: Subpart A and Subpart D provisions apply across the board. The rule is structured so that Section 3's general requirements are in Subpart A. Subpart B and C only apply depending on funding source. Other detailed requirements that apply across the board, such as recordkeeping and compliance, are in Subpart D. HUD believes this structure makes sense and is consistent with other rule structures.

Administrative and Compliance Costs

According to one commenter, this section implies the responsibility for ensuring workers meet the defined requirements in § 75.5, such as Census tract designation and annualized wage calculations, for CDBG Section 3 projects will lie with contractors, which will therefore be costly for contractors who lack the capacity or are already burdened by paperwork. The commenter suggested it may be easier to have recipients bear this burden.

In contrast, one commenter noted contractors would have to provide a personnel profile that includes, at a minimum, income, current address, address at time of hire, and YouthBuild status to establish whether an employee of a non-Section 3 business concern meets any of these criteria. Contractors and employees may balk at a request for this type of personal information, which may become public record. The additional administrative burden placed on otherwise qualified contractors may reduce contractor participation, thereby increasing costs and lessening the impact of Section 3 covered programs on their intended beneficiaries.

HUD Response: HUD believes the rule will not impose additional administrative and/or compliance costs for contractors. Administrative and compliance costs associated with Section 3 requirements should be properly resourced within a contractor's bid for a project and are already required for confirming compliance

with existing Section 3 requirements. Contrary to the comments, contractors do not have to provide a personnel profile or any sort of personally identifiable information. HUD has never requested this detailed information and this rule does not change that; the data is only reported in aggregate, and records are maintained for verification only. Recipients may, but are not required to, assist contractors who lack capacity to adequately implement the Section 3 requirements.

Contracting Provision § 75.17 and § 75.27

Commenters urged HUD to retain standard Section 3 language to be included in contracts because the use of consistent language makes it easier for contractors to be certain of their obligations, limits the possibility of confusion for contractors working on multiple projects, and decreases administrative burden for agencies. Other commenters expressed concern about whether the Voluntary Compliance Agreement clause will continue to exist in contracts and who will enforce it.

HUD Response: HUD considered commenters' requests for standard contract language; however, the contract language must be customized depending upon the contract and the program. HUD anticipates providing sample language and/or discussion of contracting best practices but determined that the recipient is in the best position to determine what contract language is appropriate in each context.

Multiple Funding Sources/Recordkeeping for Multiple Funding § 75.29 / § 75.31

Clear Standards and Secure Online Tool

Other commenters recommended that there should be clear standards for reporting on Section 3 regardless of the funding source to reduce the possibility of errors and to eliminate the need to report in different formats. These commenters suggested that if HUD defers to localities, the agency that is the primary recipient of HUD funding should determine which option of reporting should be used by subrecipients to allow for consistency in reporting approach. These commenters also recommended that public housing financial assistance guidelines should dictate reporting requirements for PHAs administering projects with multiple funding sources. For projects that are mix-funded with PHA and other HUD funding, § 75.29(a) says that the other HUD funding stream (e.g. CDBG) may report using the PHA criteria.

Commenters recommended that compliance documentation be accessible in a secure online tool or standard form which would measure new hires, hours percentages and training persons and hours. These commenters went on to suggest developing a form for contractors or subcontractors to complete to confirm workers' Section 3 eligibility, which would ease administration and will foster consistency. With respect to the self-certifications discussed in proposed § 75.31, it would be helpful if HUD were to provide a form for this purpose.

HUD Response: HUD thanks the commenters for their recommendation and notes that there will be a standard set of data reporting regardless of which system is used for reporting. The same data will be collected across programs for consistency; the only difference will be how it looks when reported.

Benchmarks for Section 3 Workers and Targeted Section 3 Workers

Many commenters supported including benchmarks for Section 3 workers and Targeted Section 3 workers. Some commenters supported HUD's initial benchmarks, as a starting point, and focus on labor hours. Additional commenters supported using both benchmarks stating that limiting the benchmark to only Targeted Section 3 workers would fail to encourage hiring of other Section 3 workers. Another commenter supported elimination of the 3% goal for non-construction contracts to be Section 3 business concerns. Other commenters supported the benchmarks with the caveat that HUD retain the new hire framework for PHAs or the tracking of the labor hours if they do not have an hour tracking system already in place. These commenters suggested evaluating the efficacy of this approach and revising as necessary if data indicates the change is not supporting sustained employment.

Other commenters stated that HUD's benchmark that Targeted Section 3 workers make up 5 percent of the total number of labor hours is too low. The commenters proposed that at least 15 percent of labor hours worked be the benchmark for Targeted Section 3 workers. The commenters stated that the Section 3 statute clearly prioritizes employment for residents of public housing and other HUD-assisted housing programs.

Some commenters noted that the benchmark for labor hours is too ambitious and unreasonable. Commenters cited to the fact that low-income workers are not necessarily qualified for construction jobs, even those jobs at the lower end of the

construction pay scale, and finding low-income workers who are both qualified for the positions and willing to work in construction is much harder than identifying the number of potentially eligible low-wage workers. Commenters also noted that many low-income persons have childcare and transportation challenges and many contractors do not have open positions to fill by low-income persons.

Another comment opposed the 5% Targeted Section 3 goal, stating it was unrealistic given most PHA residents are seniors, have some form of disability, or already work. Commenters also noted that the benchmarks will be especially difficult to achieve in rural locations.

One commenter opposed the two categories of Section 3 workers, noting the pool of workers is already small, and makes achievement of benchmarks challenging. While the additional categorization provides data collection value, it creates additional burden and goes beyond the statute's requirement. The commenter noted that the benchmark fails to recognize many other initiatives to assist residents to work towards long-term employment and self-sufficiency (such as Family Self-Sufficiency (FSS) programs).

Commenters also noted the current benchmarks have been difficult to meet, and that the new bar would likely require that all positions engaged, rather than only new hires, go to Section 3 workers. The commenter recommends that in an environment of under-funding and over-regulating that HUD establish a modest benchmark that recognizes training and adjust upward later, if necessary. The commenter noted the current recommendation is extremely aggressive and unreasonable; and would result in few agencies meeting the mark. Additionally, it would fail to reduce reporting burdens, align regulations with standard business practices, or increase Section 3 successes.

Other commenters focused on the Targeted Section 3 worker benchmark, noting that the category complicates tracking and decreases the likelihood of meeting benchmarks. The commenter suggested taking an alternate approach to tracking Targeted Section 3 workers without establishing a separate benchmark. One commenter stated that the benefits and goals of the Section 3 statute would be difficult to measure by tracking only Targeted Section 3 workers in that it would fail to represent the value of providing economic opportunities to individuals who are low-income but may live outside the immediate project area, who otherwise still qualify for Section 3 preference.

Other commenters stated that for Subpart C, HUD should only measure compliance of Section 3 with overall Section 3 worker tracking and should not apply Targeted Section 3 workers metrics or benchmarks. The commenters stated support for retaining the existing 30 percent benchmark for all Section 3 new hires but that it should not be required to be disaggregated between Section 3 and Targeted Section 3 workers. The commenters stated that this approach would keep the benchmarks in line with the goals of Section 3 while providing contractors and administering agencies with the ability to tailor implementation depending on the composition of the local workforce and specific project needs.

A commenter noted that they ran numbers with the new metric, along with other PHAs, and they all reported much lower percentages, in most cases half of the proposed numbers. The commenter raised a concern with employee displacement if contractors are required to meet this new ratio, which is inconsistent with the goal of Section 3 to create new jobs rather than displace existing employees or inflate project costs. The commenter noted that recipients hiring contractors instead of replacing or hiring more employees could game the system or add significant costs by hiring additional but unnecessary Section 3 workers for the project life.

HUD Response: The statute requires Section 3 prioritization and this rule's goal is to ensure statutory adherence and streamlined reporting. HUD created the Targeted Section 3 worker category to include both the statutory priorities and policy priorities, for example, tracking the hiring of public housing residents where public housing assistance is involved and tracking the residents of the neighborhood or service area when other housing and community development assistance is used. Prioritization is meaningless without the categorical distinction and HUD believes that technology enables better tracking compared to at the statute's inception. As for the benchmarks, HUD will establish the benchmarks via Federal Register Notices which will allow them to change over time, as data is reported and gathered. HUD believes 5% is a reasonable estimate from the Office of Policy Development and Research (PD&R) data. Additionally, compliance can be evaluated qualitatively if the hours benchmark cannot be met. Under this rule, both measurements are permissible, and the requirements for qualitative evaluation are laid out in the

rule. HUD believes this flexibility will deter any incentive to hire unnecessary Section 3 workers.

Qualitative Measurement

One commenter supported changes to reporting requirements and appreciated the ability to report qualitative efforts if benchmarks are not met. One commenter stated that compliance should be evaluated qualitatively rather than using hours as a benchmark. Commenters stated that the proposed certification related to prioritization of Section 3 hiring efforts would be burdensome to agencies and contractors. The commenter wrote that HUD should require agencies to certify what efforts they have implemented to achieve the goals of the Section 3 program to be considered in compliance. This approach would maintain the benefits and incentives of the program and provide HUD with a tool for accountability.

HUD Response: The statute requires agencies and contractors to prioritize their hiring efforts according to the statute's terms. The rule requires funding recipients to certify that they have acted in compliance with the statute, and to report on the quantitative outcomes of their efforts relative to the benchmarks. HUD does not consider it burdensome for a recipient of HUD funding to certify that they have acted in compliance with the statute. Furthermore, compliance can be evaluated qualitatively if the hours benchmark cannot be met. Under this rule, both measurements are permissible, and the requirements for qualitative evaluation are laid out in the rule. If reporting is above the benchmark, then HUD will presume compliance with the regulatory requirements; HUD wants to see actual positive outcomes rather than just a recipient's inputs. HUD appreciates the request for additional compliance tools but believes that requiring such reporting for all agencies would be overly burdensome.

Safe Harbor

Commenters stated that the proposed rule is not clear on how Safe Harbor would be met for Section 3 projects. The commenters questioned what type of data collection would be used to assure accurate reporting and how to meet the percentages of Section 3 and Targeted Section 3 workers. The commenters asked whether there would be a tool to assist with this data collection.

HUD Response: HUD will issue sub-regulatory guidance and provide technical assistance on a program-by-program basis to assist recipients with

clearly understanding the Section 3 safe harbor parameters. Recipients will provide data regarding Section 3 and Targeted Section 3 workers through existing HUD information systems, as defined by each covered program. HUD will not impose additional data collection burdens on recipients because of the rule.

Small PHAs Should Have a Separate Benchmark

One commenter recommended that Safe Harbor benchmarks should be established for small PHAs and suggested HUD establish a minimum threshold of work-able and non-working residents. Another commenter stated that some smaller businesses do not usually track labor hours performed on specific projects, and it can be a struggle for them to learn how to do so. On Davis-Bacon projects, contractors are required to submit certified payroll; however, some projects may be subject to Section 3 that are not subject to Davis-Bacon and related acts. The commenter stated that requiring the tracking and reporting of labor hours could pose a significant additional burden to small contractors.

HUD Response: One of HUD's goals through this rule is to ensure that employment and other economic opportunities generated by Federal financial assistance for housing and community development programs are, to the greatest extent feasible, directed toward low- and very low-income persons, particularly (though not exclusively) those who receive government assistance for housing. HUD believes that it is essential to achieving this goal that small PHAs report on their efforts to comply with Section 3 but acknowledges that small PHAs may have more difficulty achieving the quantitative benchmarks and consequently has permitted a qualitative reporting alternative for small PHAs. HUD is considering further ways to streamline and ease qualitative reporting by creating a tracking form and timing submission deadlines consistently with timeframes that PHAs and other recipients of public housing financial assistance are already using to submit documents to HUD. HUD has established that small PHAs with less than 250 public housing units will not be required to report labor hours or meet benchmarks, but instead will be permitted to submit qualitative reports on their efforts to involve residents in job-seeking and training endeavors. HUD recognizes the challenge when small PHAs have very few work-able, non-working residents that would make meeting benchmarks very difficult.

Alternatives

One commenter suggested limiting the benchmark to only Targeted Section 3 workers in order to provide a more streamlined approach to reporting. The commenter stated that if the benchmark is narrowed to Targeted Section 3 workers, then tracking data for Section 3 workers should not be required. Other commenters recommended removing the Targeted Section 3 worker benchmark. One commenter stated that if labor hours are tracked, the requirement should be limited to Section 3 workers in general and that the benefits of adding the Targeted Section 3 worker subcategory are not apparent enough to outweigh the complications. One commenter supported giving PHAs and entities using housing and community development assistance a choice to use either targeted Section 3 workers or Section 3 workers as their benchmark.

Other commenters recommended other benchmarking alternatives. Some commenters recommended that the benchmark include a focus on Section 3 business concerns, such that 3% of all contracts are for Section 3 business concerns. One commenter stated benchmarks should ensure that local jobs are provided to local persons to reduce commute times and recommended using geographically determined numbers. The commenter noted that many factors can affect regions and a national number can skew the worker availability distribution. One commenter suggested that such regional benchmarks allow HUD to forecast how many PHAs and Section 3 projects could meet the benchmarks assuming agencies are using their "best efforts" to hire Section 3 workers and Section 3 projects are hiring and contracting with Section 3 workers and business concerns to the "greatest extent feasible." According to comments, regional benchmarks can help account for uneven distribution of potential Section 3 workers throughout the country. Geographic standards may also help address differences between union and non-union states. If HUD were to set regional standards, there should be a national level appeals process. Commenters also suggested allowing use of local adjustment factors and economic data when establishing compliance benchmarks, especially unemployment rates which affect the ability to meet benchmarks.

One commenter stated the benchmark does not ensure Section 3 workers are engaged in a mix of job categories or trades, or opportunities for upward mobility; 30% of hours worked should

be measured for each job category/trade and protected classes. Other commenters suggested HUD consider the type of public housing financial assistance or other variables. The commenter recommended that in addition to different types of benchmarks HUD should maintain a ceiling for these benchmarks. The commenter noted a goal of 80% of entities meeting the benchmarks would be appropriate.

Other commenters stated that in order to fulfill the statutory objectives of Section 3 to direct the financial opportunities to low- and very low-income persons and recipients of housing assistance, the final rule must: (1) Set benchmarks in a way that actually prioritizes HUD tenants; and (2) employ a definition of Section 3 worker and Targeted Section 3 worker that includes exclusively low-income individuals. Commenters also proposed separate benchmarks for public housing projects and non-public housing projects and provided a specific hierarchy of workers. Other commenters noted proposed benchmarks for PHAs should reflect the law's emphasis on providing opportunities for public and assisted housing recipients.

Commenters suggested an alternative approach for workforce utilization setting goals for all construction and other blue-collar employment, such as landscaping and janitorial. The commenters suggested that labor hours also consider demographics, length of project, geography, and size of contractors.

One commenter recommended that the determination of Section 3 compliance be measured by combining all workers for all Section 3 projects to get an overall picture of the number of low-income workers being paid with these federal dollars. If the percentages of Section 3 and Targeted Section 3 workers are met, this better shows intent to comply with the spirit of Section 3.

HUD Response: HUD appreciates the suggestions and has considered multiple benchmarking options. Creating separate benchmarks would make projects with co-funding difficult; the commenter's suggestions increase both complexity and the burden of reporting. HUD believes the current benchmark is a good starting place and notes that the regulation permits adjusting the benchmarks via **Federal Register** publication. HUD program staff will evaluate the level of effort expended by those recipients that fail to meet the benchmark safe harbor, and thus will ensure that the statutory terms are being properly enforced. HUD is most interested in strong outcomes for

Section 3 employees. In addition, HUD has no programs that align with specific regions and intends to see reporting data before making any additional distinctions, if appropriate.

Compliance (§ 75.33)

General

A comment stated HUD needs to strike a balance between the limits of state and local agency resources and Section 3's goals to provide more effective resources to foster compliance. Similarly, another comment suggested HUD utilize Community Compass technical assistance funds to create best practice resources and employ contractors to provide Section 3 compliance support to those jurisdictions and PHAs without designated staff for this purpose. Another comment recommended HUD simplify the compliance requirements by establishing a "presumed eligibility" criteria for businesses or residents located in HUD-approved Neighborhood Revitalization Strategy Areas, Choice Neighborhood target areas, Promise Zones, Empowerment Zones and Enterprise Communities, Opportunity Zones and other areas defined at 24 CFR part 570.208(a)(1)(vii).

A commenter suggested states and entitlement communities be required to develop Section 3 Plans that become part of the 5-year Consolidated Plan to allow time for compliance with the labor hours percentages while requiring demonstrated improvement over time. The plan should track Section 3 performance and demonstrate labor partnerships, construction, and training programs to target and find workers and an environment that promotes Section 3 goals. HUD should describe the plan's components, including how to notify the public of opportunities for involvement in designing the plan, how and when to notify the public when Section 3 employment and bidding opportunities arise, how to inform workers of their rights, and complaint processes. Commenters recommended HUD establish ethics standards for organizations who have a fiduciary responsibility over Section 3 funds. Other commenters suggested compliance failures to adhere to Section 3 business concern criteria should be cured within two payroll periods or be terminated; terminated contractors should be banned from receiving HUD funds for 3 years from the termination date; and that persons found to have falsified their residence to qualify as a Section 3 worker should be suspended from participation for 3 years.

Commenters stated HUD should: provide greater clarity on the obligations created by § 75.33(a), especially since the preceding section, § 75.31, imposes highly specific recordkeeping requirements; explain whether the recordkeeping obligation in § 75.33 is a restatement of the recordkeeping obligations set forth in § 75.31, or whether additional records are required to demonstrate compliance; and HUD should provide guidance on documentation and recordkeeping related to "best efforts" or "greatest extent feasible" efforts.

HUD Response: This rule is intended to strike a balance and foster compliance with Section 3's goals and will result in a reporting and recordkeeping burden reduction. HUD wants to ensure employers are invested in keeping Section 3 workers employed, and that there is enough opportunity to build skills and experience so that Section 3 workers may develop self-sufficiency and compete for other jobs in the future. HUD will review Department-level strategies on how to effectively incorporate Section 3 reporting into current systems and data collection tools, including the Consolidated Plan. HUD will issue sub-regulatory guidance on reporting by program area and provide technical assistance to recipients for Section 3 compliance. HUD appreciates the suggestions and notes that there will be standardized compliance procedures across programs, and this will include ethics standards. Section 75.33 is a reaffirmation of the recordkeeping requirement set forth in § 75.31, as recipients of HUD funding will need to have the records described in § 75.31 available if HUD needs to do a compliance review of a recipient's Section 3 performance. HUD determined not to define the difference between "best efforts" or "greatest extent feasible," but rather to increase the emphasis on outcomes as a result of these efforts. Please see the "Best efforts" and "greatest extent feasible" section above. A recipient's reported results will be compared to the outcome metrics defined in the benchmark Notice. HUD program staff will evaluate the level of effort expended by those recipients that fail to meet the benchmark safe harbor, and thus will ensure that the statutory terms are being properly enforced.

Complaints and Monitoring

Commenters stated each HUD program should have a detailed complaint process. A commenter supported the integration of Section 3 into each program area but noted the

lack of detailed complaint provisions, and suggested the final rule require each HUD program to have a detailed complaint process, with enforcement assigned to Davis-Bacon and Labor Relations (DBLR), Office of Field Policy and Management (FPM), or the Office of Fair Housing and Equal Opportunity (FHEO).

Commenters supported removing Section 3 enforcement from FHEO but strongly suggested HUD identify an office independent of the program offices to monitor and enforce Section 3 requirements, such as FPM, or a new Section 3 office fully funded and trained to work on Section 3. Giving responsibility for Section 3 compliance to the program that is responsible for funding that triggers Section 3 obligations is problematic because (1) HUD program staff have in the past referred to PHAs and jurisdictions, not the residents who are supposed to benefit from HUD programs, as their "constituents," (2) there is currently no process for accepting and reviewing complaints in the proposed rule, (3) significant training and resources will be required to prepare program staff to oversee Section 3 compliance since they are not currently engaged in it. HUD should require that Section 3 policies, plans, procedures, and complaints are made publicly available by both the recipient and on HUD's website.

Other commenters agreed with the proposed shift of oversight from FHEO to program offices and believed this will improve oversight because program offices already monitor recipients on a day-to-day basis, thus Section 3 monitoring will become part of normal overall monitoring. Another commenter stated transferring oversight and compliance from FHEO to program offices is an appropriate change on the condition that oversight practices are standardized across program offices. Another commenter was concerned about the Section 3 complaint process for residents; HUD program areas do not have detailed provisions for residents to file complaints on the part of PHAs or jurisdictions that do not meet program requirements. At a minimum, if HUD defers to grantees to field complaints from individuals, the process should require a grantee to inform HUD of the resolution of each complaint much like CPD does with CDBG-DR complaints.

A further commenter stated it is not clear how the public will make complaints if the current complaint process is removed and asked how they will know which program office to contact. Other commenters suggested the final rule require a detailed complaint process identical or similar to

what is in the current rule. Further commenters expressed that HUD should keep the existing complaint process until it adopts a new one after public review and comment. Other commenters were concerned about the 958 Complaint Form's elimination and the impact on residents who will be left without protections or a process for monitoring and overseeing contractors who are violating Section 3 requirements. One commenter felt that to move the review process from FHEO to local HUD CPD would be disastrous.

A commenter noted that HOME and CDBG recipients do not seem to understand the importance of Section 3 and the compliance enforcement—appropriate remedies are not in place. According to one commenter, the promise of Section 3 has not yet been realized, largely due to the fact that none of the entities responsible for its administration—HUD, state and local governments, PHAs—have been sufficiently resourced to implement, monitor, and enforce Section 3 requirements. The HUD program offices responsible for funding all are currently under-resourced and could better fulfill their obligations in monitoring and enforcing Section 3 with dedicated staff.

One commenter had concerns about moving Section 3 regulations from 24 CFR part 135 under FHEO to the new part 75 under the Office of the Secretary; the commenter assumed Office of Field Policy and Management would have oversight of Section 3 under the proposed rule amendment and expressed concern over FPM's lack of capacity and technical knowledge to oversee monitoring and enforcement of Section 3. The commenter argued HUD has never seriously monitored and enforced the statute and that HUD program staff treat PHAs and jurisdictions as their constituents, not the residents who are the intended beneficiaries. Additionally, alternative procurement provisions should be created to help Section 3 business concerns compete with larger more established businesses.

One commenter was concerned about different program offices providing conflicting information and hoped HUD would provide standardization and clear guidance; others suggested HUD request adequate funding to hire the necessary headquarters and field office staff to provide Section 3 technical assistance and to robustly monitor and enforce Section 3, as well as seeking adequate funding so that all jurisdictions and PHAs can hire and retain staff to serve as Section 3 coordinators and to monitor and enforce Section 3 obligations. A commenter has

received conflicting guidance from different program offices, resulting in findings and fines on several occasions.

HUD should provide further detail as to what standards each program office would be using to provide oversight and what procedures are in place to ensure that PHAs receive consistent oversight across offices. Further clarification is also needed as to how the responsible program office would be designated for oversight when a project uses multiple funding sources and triggers oversight from multiple program offices.

A commenter recommended HUD strengthen its compliance practices to incentivize performance while recognizing legitimate constraints. The commenter also recommends stating in the rule that HUD will deduct points in relevant HUD program Notices to applicants for competitive HUD funding who have not achieved Section 3 benchmarks and allowing applicants the ability to provide justifications for failure to meet benchmarks despite good faith efforts. The commenter also recommended allowing program offices to incentivize Section 3 compliance in funding Notices but have a Department-wide entity focus on all aspect of compliance (reporting, analysis, and information technology systems).

HUD Response: HUD took the concerns about the complaint process under advisement, and § 75.33(b) has been amended to include “or local HUD field office.” HUD believes Section 3's objectives will be better achieved by moving Section 3 oversight into the program offices so that HUD staff who are actively engaged with recipients in their program planning and activities will bring Section 3 concerns and considerations into their routine interactions with the recipients. HUD will provide external and internal technical guidance on complaint handling and routing. The Office of Field Policy and Management (FPM) will be taking a greater role at the field level by filtering complaints to the corresponding office, rather than every HUD program office having its own complaint process. The local HUD field office is part of the FPM organizational structure, and also provides individuals with a complaint venue when the complainant does not know which program office would be responsible. There will be variation in what guidance and/or compliance looks like for each program office, but HUD will provide support to the extent it is standardized across program offices.

Enforcement

Commenters stated any contractor or Section 3 resident found to falsify data

in order to receive benefits from HUD funded training, contracting, and employment should be immediately removed and/or barred from participation in Section 3 programs for ten years. Violations should be posted and made available to the public for review. Every PHA should have a written Section 3 Plan-Policy in place and attached to any Request for Proposals for bids.

HUD Response: HUD believes that recipients should have the flexibility to determine how to implement Section 3. HUD also believes this new regulation will make such implementation easier. While the final rule does not require recipients to have Section 3 plans or policies, HUD views having them as a best practice that will aid recipients in achieving the Section 3 benchmarks. As for the concern about potential fraud, program offices will continue to monitor compliance with Section 3 requirements through evaluation of qualitative or quantitative reporting, complaint review, and program audits, if appropriate.

General Comments

One commenter said all policies should be expressed in “simple” terms for all stakeholders, especially residents, to understand. Commenters stated there is little point in creating policies and programs that produce only six-week or six-month jobs, or jobs that do not lead workers out of poverty. HUD recipients have difficulty in assisting residents in obtaining and maintaining any jobs, let alone high-wage jobs that will lead to careers and help residents leave poverty behind.

A commenter expressed the Section 3 rule is “of great benefit to have in effect and keep up to date.” Section 3 funding recipients should be mandated to actively seek employment at all times to the best of their ability and report an employment log to track job applications.

One commenter indicated many of the proposed changes do not reflect the construction trade's current realities and would impose costly new obligations on PHAs without a funding source to pay for those requirements. Another commenter argued Section 3 is “just another burdensome regulation” that “doesn't produce a positive outcome.” One commenter stated the proposed rule would have an adverse impact on the Section 3 participation that HUD desires, whereas others supported the proposed rule amendments.

One commenter stated public housing living conditions are poor; Section 3 programs are practically non-existent in the commenter's area; and the way that

public housing residents' income is calculated is problematic.

A commenter stated Section 3 is one of HUD's most important responsibilities since it creates the standards for employment, training, and contracting opportunities generated from HUD financial assistance. This commenter felt a stronger Section 3 rule can lead to increased hiring and contracting opportunities; overall the proposed rule has many merits and is an improvement. Similarly, another commenter stated the potential benefits of Section 3 have never been realized; the improvements to the rule have potential to improve outcomes.

According to one comment, the proposed rule amendments try to address Section 3 program implementation difficulties but still present incongruities; HUD should consider methods to enact preferences or incentives. A commenter stated it is difficult to find Section 3 employers in some jurisdictions, and some jurisdictions have no active YouthBuild program. Commenters noted most HUD households are headed by or include females, minorities, or female minorities. Section 3 regulations should be designed to give low- and very low-income people (particularly recipients of Federal housing assistance) a pathway out of poverty, and PHAs should be required to work with organizations that have a proven track record of successfully recruiting, training, and retaining women and minorities in the construction industry. A commenter recommended HUD work directly with the National Task Force on Tradeswomen's Issues.

HUD Response: HUD thanks the commenters for their responses. This rule is intended to strike a balance and foster compliance with Section 3's goals and will result in a reduction of reporting and recordkeeping burdens. HUD wants to ensure employers are invested in keeping Section 3 workers employed, and that there is enough opportunity to build skills and experience so that Section 3 workers may develop self-sufficiency and compete for other jobs in the future. HUD agrees that this regulation is designed to give low- and very low-income people (particularly recipients of Federal housing assistance) a pathway out of poverty. There is no mandate in the rule for Section 3 funding recipients to constantly apply for new jobs, nor are there requirements for PHAs to work with certain organizations.

Other Programs

Commenters noted opportunity discrimination is unconstitutional; all citizens have a right to wealth and prosperity. States can support and invest in their cities' workforce through equity and management but should first complete a local needs assessment. One commenter referred to Perkins V (the Strengthening Career and Technical Education for the 21st Century Act) requirements for eligible recipients to conduct a comprehensive local needs assessment every two years. One commenter suggested creating a Section 3 Score Card for public information to capture grantee compliance and ensure that contractor compliance with Section 3 requirements are considered for future employment and contracting opportunities, and improving the effectiveness of the program will enhance compliance to realistically measure targeted outcomes.

A commenter recommended HUD consider developing an annual recognition program for PHAs, subrecipients, contractors, and subcontractors for excellence in Section 3 performance, rather than redesigning the tracking and reporting requirements.

HUD Response: HUD thanks the commenters for their responses. HUD affirms that discrimination based on protected classes is unconstitutional. The Perkins programs noted in the comment are administered by the U.S. Department of Education and there are no requirements for eligible recipients to conduct a comprehensive local needs assessment every two years in the rule. There are no provisions to create a public Section 3 Score Card or an annual PHA recognition program at this time.

Technical Fix

One commenter noted in the amendment to 24 CFR 93.407(d), the proposed rule still references 24 CFR part 35 instead of 24 CFR part 75. The commenter recommended that HUD change the citation to reflect 24 CFR part 75.

HUD Response: Thank you for your comment, but HUD declines to change the citation. The amendment referred to is a technical amendment to the regulations unrelated to the Section 3 regulations. The cross-reference to 24 CFR part 35 is in reference to records demonstrating compliance with lead-based paint requirements, which continue to be covered by 24 CFR part 35.

HUD Program Collaboration

Commenters stated that funding for Section 3 coordinators, and technical

assistance or written guidance on coordination with other self-sufficiency programs such as FSS would allow for Section 3 to more effectively meet its goals. One commenter opposed changes to the rule stating that HUD should not scale back its existing operations and rule. The commenter also recommended that HUD and other agencies ensure coordination with benefit planners so that people with disabilities are involved in planning neighborhoods and community opportunities for work.

HUD Response: HUD appreciates the suggestion for more funding for Section 3 coordinators. HUD believes that this rule will streamline the Section 3 regulations to create additional incentives and streamline reporting requirements, thereby offsetting the need for more funding. HUD notes that by conducting in-service trainings and proactively engaging with appropriate partners in the Social Security Administration (Work Incentives Planning Assistance), Department of Labor (ETA & ODEP) and Health and Human Services (CMS, ACF & ACL) to identify best practices and model approaches, FPM will make the appropriate decisions regarding potential coordination with FSS, other self-sufficiency programs, and/or programs for people with disabilities. HUD continues to encourage PHAs and recipients of HUD funds to coordinate with other agencies and local communities to assist in hiring Section 3 workers. This rule does not change that. Moving the oversight of the rule to FPM and the program offices will not scale back HUD's role in ensuring compliance with Section 3 requirements. HUD believes that the move will actually ensure better compliance given the new location of oversight and the new tracking mechanisms.

Title VI

One commenter suggested the Section 3 rule should include information that Title VI of the Civil Rights Act also applies to Section 3, prohibits against discrimination, and requires language assistance.

HUD Response: Title VI applies to any program or activity receiving Federal financial assistance from HUD. Section 3 is a requirement, not a program that receives HUD funding.

Extend Comment Period

One commenter recommended HUD extend the comment period for affordable housing developers to suggest more effective changes.

HUD Response: HUD believes that the 60-day comment period provided ample

opportunity for affordable housing developers and other members of the public to suggest changes to this rule.

Outside the Rulemaking Scope

One commenter, a stakeholder in a major metropolitan area PHA that is being monitored by a “Federal Monitor” as a result of a 958 Complaint, stated that the appointed Federal Monitor has no housing experience and that all parties involved have missed the most important purpose of Section 3, which is economic empowerment for low and very low-income persons residing in local communities for HUD invested projects.

One commenter proposed defining an execution fee as a “percentage of bidder’s final submitted price added by the recipient or general contractor because the contractor/subcontractor provided no Section 3 benefit.”

One commenter stated concern about the lack of focus on higher level training as a vehicle for individuals to develop skills and build a better future. The commenter stated that the proposed benchmarks and guidelines provide no framework for differentiating training or skilled work classifications from general labor, so there would be no incentive for creating higher level opportunities. The commenter requested that HUD provide guidance on how to encourage this sort of activity under the new benchmarks.

HUD Response: HUD thanks the commenters for their suggestions, however, these comments are outside the scope of this rulemaking.

Miscellaneous

Impact on Rural Areas and States

Commenters stated it is difficult to comply with Section 3 requirements in rural areas. The goals of Section 3 are more feasible in densely populated urban areas. The proposed rule does not improve this circumstance. Section 3 eligible individuals cannot take advantage of Section 3 opportunities in rural areas because they are nonexistent. There are not ample conditions to facilitate Section 3 in small communities and rural areas. Rural areas have less availability of contractors and employees and there needs to be flexibility to engage people outside their service area to complete projects. One commenter noted benchmarking methodology seems strongly skewed toward large urban centers and overlooks geographically large states with relatively small rural populations, and asked HUD to make exceptions for jurisdictions with smaller and more rural populations. Some commenters noted that contractors in

rural states rarely need to hire new employees because the projects are small, the contractors have limited growth potential, or the employers have tenured staff. The commenter further stated that the new hire’s length of employment coincides with the project and terminates at project completion.

Commenters noted Section 3 is particularly difficult for states to administer. Another commenter explained that as a state, it does not hire the contractors for the CDBG projects. The local jurisdictions do that. It has no opportunity to promote the hiring of Section 3 business concerns. The very small communities with which it works have implemented procurement policies that award contracts to the lowest responsible bidder. They will not award a contract to a higher bidder just because the bidder is a Section 3 business concern. The commenter stated that the Section 3 regulation should apply to the CDBG Entitlement program and not the Small Cities program. One commenter suggested that state CDBG recipients should have the same flexibility in reporting as small PHAs.

HUD Response: HUD acknowledges that implementing Section 3 in various geographic areas presents different challenges for rural areas versus densely populated urban areas. HUD believes this has been addressed within the proposed Section 3 regulation by using a circle centered around the worksite that expands until it reaches a population of at least 5,000. HUD further acknowledges that, in particularly remote areas, the expandable circle may reach a size that may be impracticable to match those benefiting from the project with the Section 3 benchmark. If the recipient is unable to meet the Section 3 benchmark described in § 75.11, it will be required to report in a form prescribed by HUD on the qualitative nature of its activities or those of its contractors and subcontractors. This will allow the recipient to explain in qualitative means why it was unable to meet the Section 3 benchmark. HUD is sympathetic to the issues raised for rural areas and will watch implementation carefully as it progresses, allowing for updates as deemed necessary. HUD will also provide sub-regulatory guidance on the submission of qualitative reports to enable smoother implementation of the requirement.

Coordination With Nonprofit Organizations and Other Agencies

Commenters suggested HUD require PHAs and other recipients to work with organizations with a proven record of accomplishment of success in the

recruitment, training, and retention of women and minorities in the construction industry and other blue-collar occupations. The Department of Labor is already working with many of these organizations and has a list of apprenticeship training and technical assistance providers to help with the recruitment of Section 3 residents, pre-apprenticeship training and ongoing support. Commenters also suggested that HUD work directly with the many tradeswomen organizations, and other nonprofits already providing construction readiness training programs (also called pre-apprenticeship training) and the National Task Force on Tradeswomen’s Issues. In 2018, women made up only 3.4% of construction workers. While this figure represents progress, it demonstrates the need for HUD and its recipients to partner with tradeswomen and other organizations who have expertise in successfully getting women and minorities into the construction trades, and, more importantly, creating a real opportunity for careers in the construction industry. One commenter recommended forging closer ties with the Tribal Employment Rights Offices and directing the HOME and CDBG programs to consider this approach to ensure tribal communities’ benefit from HUD program projects nearby. Other commenters suggested planning grants to form or strengthen partnerships with Workforce Investment Boards or inter-agency collaborations with workforce programs within the Department of Labor.

HUD Response: HUD concurs that building strong collaborations between and among several Federal, state, and local partners will aid Section 3’s goals. HUD will consult with the Departments of Labor, Health and Human Services, Commerce, Small Business Administration, and other agencies as determined by the HUD Secretary to meet the Section 3 statute’s mandate at 12 U.S.C. 1701u(f). HUD will also take the comments provided under consideration as it looks for ways to conduct successful outreach and technical assistance strategies for Section 3 implementation.

Outreach and Training

Commenters recommended that HUD facilitate the competition for Section 3 excellence among developers and contractors by developing an online database of completed Section 3 covered projects that includes the names of the developer and general contractor, the nature and size of the project, and the Section 3 employment, contracting, training and retention outcomes

achieved. Commenters urged HUD to create a national database of Section 3 outcomes and to facilitate the inclusion of training and retention programs in bid materials by collecting and sharing best procurement practices.

One commenter suggested HUD should explicitly require PHAs and CDBG recipients to make reasonable efforts to connect Section 3 workers and Targeted Section 3 workers with local workforce development and career and technical education training. Another commenter recommended that the rule should give emphasis to training opportunities as is emphasized in the Section 3 statute because training is a potential response for recipients who are submitting qualitative reports for failure to meet Section 3 benchmarks.

One commenter stated there are no provisions in the rule regarding training. Similarly, another commenter noted the benchmark fails to recognize the statutory reference to training and employment opportunities. Likewise, commenters requested HUD clarify whether it is proposing new ways to track or report on Section 3 training. In the discussion of proposed §§ 75.15 and 75.25, HUD states that one of the qualitative measures a locality could use is paying for apprenticeship programs and/or offsite job training. One commenter welcomes any opportunity to expand these programs and recommends that HUD make job training an economic development activity instead of public service under the CDBG regulations. Alternatively, HUD could consider raising the public service cap for CDBG funds in order to accommodate additional job training programs.

A commenter recommended HUD provide outreach on training, employment and asset building programs to HUD assisted residents, including Family Self Sufficiency, Jobs Plus, and the Resident Opportunity and Self-Sufficiency programs. HUD should create resource guides on how CDBG has been used to support effective job training programs. A commenter suggested HUD should design a Section 3 worker's rights poster with input from HOME and CDBG grantees. Commenters noted changes to Section 3 reporting and tracking requirements may require additional resources for administering agencies, particularly PHAs in receipt of public housing assistance funds. HUD funding for the implementation of an IT system to enhance the current system and integrate with contractors would be particularly welcome to ease Section 3 monitoring and reporting for all parties. Having dedicated funding for the overall program, including support for resident

training, IT system enhancements, and other related measures, would help to further Section 3 goals while limiting potential administrative burdens.

One commenter stated PHAs noted they are most successful in helping residents find employment when they can offer employment services and trainings to help them gain the skills necessary to access jobs. However, additional funding is needed for programs like Family Self Sufficiency, Resident Opportunities and Self-Sufficiency, Jobs-Plus Initiative, and the Public Housing Operating Fund. One commenter recommended that HUD provide recipients the addresses of all public housing, PBRA projects, and Housing Choice Voucher projects by counties to assist in matching workers' addresses and automatically designating them as Section 3 workers; that HUD assist Section 3 workers in housing assistance; that Section 3 workers receive a living wage; that HUD help provide life skills such as budget counseling; and that HUD be proactive in supporting and developing (in conjunction with the Department of Labor) apprenticeship and other training programs for assisted housing residents and other low-income people.

One commenter recommended that HUD incentivize widespread replication of successful mentorship programs; create regional programs patterned after successful mentorship programs that smaller PHAs can access cooperatively; ensure the program allows for a tiered approach that allows Section 3 contractors to gain vital experience on smaller projects then graduate up to increased responsibility; and ensure that the Section 3 program continues to allow PHAs to use Section 3 contractors to complete work at all levels, including very small projects. One commenter suggested HUD request that the President's Budget include adequate funding to enable HUD to hire the necessary headquarters and field office staff to provide Section 3 technical assistance and to robustly monitor and enforce Section 3. Also, the President's Budget should seek adequate funding so that all jurisdictions and PHAs can hire and retain staff to serve as Section 3 coordinators and to monitor and enforce Section 3 obligations.

HUD Response: HUD thanks the commenters for their suggestions; as HUD updates its systems, HUD will take the suggestions under advisement. HUD encourages CDBG recipients to collaborate with local workforce development boards and training providers to create effective connections between them and Section 3 and Targeted Section 3 workers. HUD will

also provide sub-regulatory guidance and technical assistance promoting career and technical education training. HUD believes tracking labor hours provides a picture as to the success of providing job opportunities with HUD financial assistance, but as noted in the proposed rule the qualitative reporting will consider training. Reporting entities may consider training to help meet its employment goals and provide such information if goals are not met and entities are required to respond qualitatively. HUD will not provide a separate funding source; however, HUD will build on this final rule by providing technical assistance guidance for all HUD Section 3 programs. HUD will consider such guidance in creating materials for use by grantees. PHAs should already be tracking labor hours for Davis-Bacon or wage requirements and should not be doing anything more than what they did before to verify Section 3 workers as new hires. This rule just lays out the process for such verification. Once a PHA determines a Section 3 worker or Targeted Section 3 worker is hired or currently employed, the PHA would just report those hours as the numerator over the total labor hours funded with Operating and Capital Funds as the denominator.

HUD appreciates the input on ways HUD can help residents and is continuing to look at ways to make programs like Family Self Sufficiency, Resident Opportunities and Self-Sufficiency, Jobs-Plus Initiative more effective. HUD will be sure to consider those recommendations in future rulemaking. Section 3, however, is focused on how to provide job opportunities created by HUD federal financial assistance and does not have funding directly associated with it that can be used for those programs. Reporting entities may consider training to help meet their employment goals and provide such information if goals are not met and entities are required to respond qualitatively. HUD does not think it is appropriate to provide access to a list of all public housing, PBRA projects and Housing Choice Voucher residents to the public; such data sharing would implicate privacy concerns. Additionally, the PHA would have that information for seeking to hire such persons as Targeted Section 3 workers for public housing assistance.

HUD appreciates the suggestions and will consider them in providing guidance and technical assistance by both FPM and the program offices. HUD believes that there will be adequate funding for Section 3 technical assistance and monitoring in FPM. The FY2020 President's Budget Request

Congressional Justification specifically requested: “\$51.5 million to support 334 FTEs, consistent with the estimated 2019 Annualized CR level. Resources will support ongoing community engagement, monitoring and technical assistance pertaining to Section 3, compliance with the Davis-Bacon and Related Acts, enhancement of the overall customer experience and disaster recovery responsiveness at the state and local levels for clients and customers.”⁶ Federal financial assistance recipients should make their own determinations about staffing levels necessary to implement the assistance received.

Rental Assistance Demonstration (RAD)

Commenters recommended the RAD Notice should be amended to indicate that Section 3 obligations be extended post-conversion to PBV because currently Section 3 no longer applies unless additional Federal financial assistance is later used for rehabilitation. Commenters also asked for further clarification regarding RAD conversion applicability during and after construction. Eliminating RAD projects from Section 3 applicability will reduce contract awards that can provide opportunities to Section 3 residents. HUD should revise the rule to expand the definition of Targeted Section 3 worker to cover RAD and other HUD assisted tenants, and should require owners and managers of RAD-converted projects to hire, train, and contract with Section 3 residents to the greatest extent feasible in their own operations.

HUD Response: The Section 3 statute does not apply to properties that are recipients of Section 8 rental assistance unless they are recipients of other Federal funding covered by the Section 3 statute. A RAD transaction is a conversion at a moment in time and, subsequent to the conversion, the property is governed by the Section 8 requirements. HUD has administratively applied Section 3 during the RAD-related construction period even though not required by the RAD statute or the Section 3 statute. *See* RAD Notice Revision 4 and RAD program documents.⁷ HUD has declined to extend Section 3 to the Section 8 portfolio, as that would be a significant expansion of the Section 3 statute’s parameters. HUD has defined “Targeted

Section 3 workers” to include residents of public housing and Section 8 housing, which means that HUD funding recipients must report on hiring of these types of HUD-assisted tenants, which includes tenants of RAD-converted Section 8 properties.

Notice of Funding Availability (NOFA)

One commenter wrote in support of the NOFA certification’s removal. Several commenters supported the current requirement that NOFA applicants submit a certification of intent to comply with Section 3 requirements along with a statement of their proposed Section 3 activities. Commenters noted that performance among PHAs, developers, and contractors varies greatly when it comes to meeting Section 3 requirements. One commenter gave an example where a contractor might merely hold a job fair and interview any qualified Section 3 residents who apply, while another might make Section 3 hiring a condition of all major subcontract awards, contract with a community organization to conduct outreach and referral services, establish a pre-construction and/or on-the-job training program, provide job coaching and other supports, and retain Section 3 workers after completion of the Section 3 project. Commenters went on to state that using a bidder’s past Section 3 performance and the quality of their proposed Section 3 plan can have a profound effect on the quality of economic opportunities provided to Section 3 residents.

HUD Response: HUD decided to continue with the change in the proposed rule and to omit specific requirements for Notices of Funding Availability (NOFA) in the final rule; however, the final rule will require that all NOFAs issued by HUD that announce the availability of funding covered by section 75.3 will include notice that part 75 is applicable to the funding and may include, as appropriate for specific NOFAs, points or bonus points for Section 3 plans. Where Section 3 is applicable, the inclusion of specific requirements in the regulation regarding the NOFA does not change the recipient’s obligation to have a compliant Section 3 implementation strategy. Similarly, where Section 3 is not applicable, the regulatory language would not apply. The presence or absence of the NOFA clause in the regulation has no effect on applicability of Section 3. HUD anticipates that program offices will include scoring for Section 3 plans where relevant and exclude Section 3 scoring where the nature of the grant being awarded is incompatible with Section 3 endeavors

(such as funding for sweat-equity homeownership initiatives). HUD is in the process of developing improved databases to inform program offices, funding recipients, and the public-at-large regarding Section 3-covered projects and the outcomes achieved. HUD hopes that these databases, plus anticipated technical assistance to disseminate information regarding Section 3 best practices, will provide a foundation for more impactful implementation of Section 3 over time.

Professional Services Exclusion

Commenters stated HUD should retain the 3% benchmark for professional services contracts, as it is not uncommon for professional services companies to meet the qualifications of a Section 3 business concern. It helps businesses who employ workers who were low-income when they were hires or businesses who were started by low-income or public housing residents that have grown professionally to provide employment opportunities to other low-income people.

Other commenters noted excluding professional services positions—typically higher paying, higher career growth—would effectively limit Section 3 workers to construction services, diminishing the potential positive impact of the statute. Ultimately, it will not provide HUD with adequate data on positive or negative impacts of Section 3’s intended goals. The intended goal of the Section 3 statute is to positively impact the lives of HUD assisted residents through meaningful job placement and training that will ultimately lead to greater self-sufficiency. The current rule includes a goal of 30% of new hires in management and administrative jobs, technical, professional, building trades, and non-construction jobs and all levels. Professional service jobs include accounting, legal services, financial consulting, architectural and engineering services. The proposed rule indicates that professional services will be excluded from benchmarking requirements, but HUD will allow voluntary reporting of these workers. A commenter suggested maintaining the current rule’s requirement of reporting on professional services but moving to total labor hours worked in both construction and non-construction services, and better tracking this data through streamlined reporting systems.

Other commenters supported excluding professional services from benchmarking requirements while allowing voluntary reporting of such workers; excluding certain types of contracts such as material and supply,

⁶ HUD’s FY2020 Congressional Justification for President’s Budget, <https://www.hud.gov/sites/dfiles/CFO/documents/2020HUDCongressionalJustifications4-2-19.pdf>.

⁷ Rental Assistance Demonstration—Final Implementation, Revision 4 Notice H–2019–09 PIH–2019–23 (HA), issued September 5, 2019.

and professional service; and excluding professional services from covered activities and suggested adding a benchmark for training activities. One commenter noted it experienced the same challenges as other HUD partners in meeting Section 3 goals when working with professional service vendors. However, the commenter noticed that in some cases vendors can carve out small segments of highly skilled work or training for low-income residents (e.g., providing an internship or hiring a recent graduate to perform a small scope of work.) While the rule allows voluntary participation of professional service vendors, commenter suggests that HUD give discretion to recipients to mandate Section 3 participation by these partners, without necessarily holding them to specific benchmarks like contractors.

HUD Response: HUD acknowledges that there are occasions when employers can create opportunities for Section 3 employment in the professional services context, and HUD lauds these efforts. At the same time, data indicate that there are relatively few such opportunities for Section 3 hiring in professional services fields such as legal services and civil engineering. Many of the positions within these professional services fields require specialized degrees and in many cases the hiring is not directly tracked to a specific Federally funded project or activity. To ensure that the carve-out for professional services is relatively narrow, however, HUD has revised the definition of professional services. While keeping the modified exclusion for professional services in the final rule, HUD notes that the reporting structure in the proposed rule allows a recipient to count as Section 3 labor hours and as Targeted Section 3 labor hours any work performed by a Section 3 worker or a Targeted Section 3 worker (i.e., in the numerator of the calculation), even when the professional services as a whole are not counted in the baseline reporting (i.e., in the denominator of the calculation). The effect of this reporting structure is to give a recipient a bonus if they are able to report Section 3 hours in the professional services context. As referenced in the comments, vendors can sometimes create opportunities in the professional services context, and HUD seeks to reward this behavior. In addition, recipients are provided significant discretion in how they seek to implement their Section 3 obligations. A recipient could elect to require, at the local level, additional Section 3 obligations with respect to

professional services through the terms of the funding contract.

V. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

This rule was determined to be a “significant regulatory action” as defined in Section 3(f) of the order (although not an economically significant regulatory action under the order). Consistent with Executive Order 13563, this rule creates new part 75 regulations that would replace the part 135 regulations, with the intention to make compliance with Section 3 more effective and less burdensome, and therefore, help to contribute to job creation for low- and very low-income persons. HUD has prepared a Regulatory Impact Analysis (RIA) that addresses the rule’s costs and benefits. HUD’s RIA is part of the docket file for this rule.

The docket file is available for public inspection in the Regulations Division, Office of the General Counsel, Room 10276, 451 7th Street SW, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at toll-free 800–877–8339.

Environmental Impact

The final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new

construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This proposed rule does not impose a Federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. As has been discussed in this preamble, this rule updates HUD’s Section 3 regulations and replace them with a new 24 CFR part 75, for which the objective is to increase employment opportunities for low- and very low-income persons and businesses that are owned by or employ such persons. These entities generally are small and therefore strengthening the requirements of Section 3 should benefit small businesses that are Section 3 business concerns. This rule also considers the burden on small public housing agencies (PHAs), defined in this rule as a PHA that manages or operates fewer than 250 public housing units, and reduces the burden on them through a new streamlined reporting process that would not require them to report labor hours or new hires. There are approximately 2,950 PHAs, of which approximately 2,250 are small.

As more fully discussed in the accompanying RIA, the number of economic opportunities generated for Section 3 residents and businesses will not increase to the degree that this rule would have a significant economic impact on a substantial number of small entities. In addition, for those small entities that must comply with this rule, the changes made by this proposed rule are designed to reduce burden on them, as well as all recipients. The current recordkeeping and reporting requirements for Section 3 is 90,180

hours with a cost of \$1,817,000. HUD estimated that this new rule will reduce the number of hours by 68 percent to 25,910 hours. The biggest reduction will be for small PHAs that will no longer need to do quantitative analysis with a total estimated time saving of 12,375 hours with a cost of \$281,036, or approximately \$125 for small PHAs. HUD also anticipates an across the board savings in recordkeeping given the time savings resulting from less time reporting new hires as a separate metric. For these reasons, HUD has determined that this rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either: (1) Imposes substantial direct compliance costs on State and local governments and is not required by statute, or (2) preempts State law, unless the agency meets the consultation and funding requirements of Section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempt state law within the meaning of the Executive Order.

Paperwork Reduction Act

Currently, 24 CFR part 135 requires that all recipients track and report Section 3 information to HUD, includes prescriptive contractual language, requires compliance by contractors of the Section 3 requirements, contains reporting and recordkeeping requirements, and provides for the filing of Section 3 complaints. SPEARS is the main site in which HUD captures the number of Section 3 residents hired and the number of contracts awarded to Section 3 business concerns. The existing information collection requirement for these requirements has

been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2529–0043.

The rule would change the existing reporting requirement to decrease qualitatively those who need to report, excluding small PHAs and recipients of Section 3 projects under the \$200,000 threshold, and require reporting only once a year by recipients of completed projects. HUD provides in §§ 75.15 and 75.25 that recipients would be required to submit reports to HUD annually either in a qualitative form or quantitative form. HUD includes all the large PHAs in the § 75.15(a) reporting number for reporting on the Section 3 benchmarks and estimates 2 hours to track and report annually given the amount of funds handled by these PHAs. HUD also estimates that a PHA will employ approximately seven contractors or subcontractors each fiscal year that would need to track and report up to the PHA, each at one-half an hour for reporting time. Lastly, HUD estimates that 5 percent of the 700 large PHAs may fail the Section 3 benchmarks and would need to report on their qualitative efforts along with the 2,250 small PHAs and estimates that such reporting would take one-half an hour.

As for § 75.25(a), HUD estimates that 66 percent of most program recipients would complete projects in a fiscal year that need to be reported except that for the HOME program, HUD estimates that 90 percent of HOME recipients would complete projects in a fiscal year, at an estimate of 3,600 recipients. Given these projects are more diverse in size, HUD estimates that the average time to report on the Section 3 benchmarks for recipients would be 1 hour. HUD also estimates that a Section 3 project will engage approximately five contractors or subcontractors each fiscal year that would also need to track and report up to the Section 3 project recipient, each

at one-half an hour for reporting time. Lastly, HUD estimates that 5 percent of the 3,600 recipients may fail the Section 3 benchmarks and would need to report on their qualitative efforts and estimates that such reporting would take one-half an hour.

HUD also notes that the rule no longer requires the inclusion of prescriptive contractual language. See §§ 75.17 and 75.27. HUD believes that this change will result in a de minimis upfront burden related to updating contracts, if recipients, subrecipients, and contractors chose to do so, but that removing the requirement will actually reduce burden on recipients, subrecipients, and contractors on a sustained basis by giving them flexibility to use alternative or existing contractual language. HUD also provides for recordkeeping requirements at § 75.31 and believes that the maintaining of records by recipients will take a recipient approximately 2 hours. However, HUD notes that some programs, such as HOME, already have recordkeeping requirements that are part of existing approved Information Collection Requests and, thus, excludes those programs from the burden matrix. Lastly, HUD maintains the option for individuals to file complaints and retains the frequency number that was in the existing Section 3 reporting burden.

In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number. The current recordkeeping requirements for Section 3 is 90,180 hours with a cost of \$1,817,000. HUD estimates that this new rule will reduce the number of hours by 68 percent to 25,910 hours for a total cost savings of approximately \$1.2 million. The overall reporting and recordkeeping burden is estimated as follows:

| Information collection | Number of respondents | Frequency of response per annum | Burden hour per response | Annual burden hours | Hourly cost per response | Annual cost |
|--|-----------------------|---------------------------------|--------------------------|---------------------|--------------------------|-------------|
| § 75.15(a) Labor Hour or New Hire Reporting for PHA | 700 | 1 | 2 | 1,400 | \$22.71 | \$31,794.00 |
| § 75.15(a) Labor Hour or New Hire Reporting for Contractors or Subcontractors of PHAs | 4,900 | 1 | 0.5 | 2,450 | 22.71 | 55,639.50 |
| § 75.15(b)–(d) Qualitative Reporting for PHAs | 2,300 | 1 | 0.5 | 1,150 | 22.71 | 26,116.50 |
| § 75.25(a) Labor Hour Reporting for Section 3 Projects | 3,600 | 1 | 1 | 3,600 | 22.71 | 81,756.00 |
| § 75.25(a) Labor Hour Reporting for Contractors and Subcontractors on Section 3 Projects | 10,800 | 1 | 0.5 | 5,400 | 22.71 | 122,634.00 |

| Information collection | Number of respondents | Frequency of response per annum | Burden hour per response | Annual burden hours | Hourly cost per response | Annual cost |
|---|-----------------------|---------------------------------|--------------------------|---------------------|--------------------------|-------------|
| § 75.25(b) Qualitative Reporting for Section 3 Projects | 180 | 1 | 0.5 | 90 | 22.71 | 2,043.90 |
| § 75.31 Recordkeeping | 5,900 | 1 | 2 | 11,800 | 22.71 | 267,978.00 |
| § 75.33 Complaints | 20 | 1 | 1 | 20 | 10.00 | 200.00 |
| Total | | | | 25,910 | | 588,161.90 |

HUD will update the appropriate OMB control number 2529–0043 to reflect this reduction in burden.

Congressional Review of Final Rules

The Office of Information and Regulatory Affairs has determined that this final rule is not a major rule, as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking pursuant to the Congressional Review Act, Public Law 104–121, sec. 251, 110 Stat. 868, 873 (codified at 5 U.S.C. 804). This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low- and moderate-income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 14

Claims, Equal access to justice, Lawyers, Reporting and recordkeeping requirements.

24 CFR Part 75

Administrative practice and procedure, Community development, Government contracts, Grant programs—housing and community development, Housing, Loan programs—housing and community development, Reporting and recordkeeping requirements, Small businesses.

24 CFR Part 91

Aged, Grant programs—housing and community development, Homeless, Individuals with disabilities, Low- and moderate-income housing, Reporting and recordkeeping requirements.

24 CFR Part 92

Administrative practice and procedure, Low- and moderate-income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 93

Administrative practice and procedure, Grant programs—housing and community development, Low- and moderate-income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 135

Administrative practice and procedure, Community development, Equal employment opportunity, Government contracts, Grant programs—housing and community development, Housing, Loan programs—housing and community development, Reporting and recordkeeping requirements, Small businesses.

24 CFR Part 266

Intergovernmental relations, Low- and moderate-income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Loan programs—housing and community development, Low- and moderate-income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

24 CFR Part 576

Community facilities, Grant programs—housing and community development, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 578

Community development, Community facilities, Grant programs—housing and community development, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 905

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 964

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 983

Grant programs—housing and community development, Low- and moderate-income housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 1000

Aged, Community development block grants, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Public housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, under the authority 12 U.S.C. 1701u; 42 U.S.C. 3535(d), HUD amends 24 CFR parts 5, 14, 75, 91, 92, 93, 135, 266, 570, 576, 578, 905, 964, 983, and 1000 as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 1. The authority for part 5 is revised to read as follows:

Authority: 12 U.S.C. 1701u and 1701x; 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d); Sec. 327, Pub. L. 109–115, 119 Stat. 2936; Sec. 607, Pub. L. 109–115, 119 Stat.

3051 (42 U.S.C. 14043e *et seq.*); E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and E.O. 13559, 75 FR 71319, 3 CFR 2010 Comp., p. 273.

§ 5.105 [Amended]

■ 2. Amend § 5.105(a) by removing “; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135.”

PART 14—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN ADMINISTRATIVE PROCEEDINGS

■ 3. The authority for part 14 continues to read as follows:

Authority: 5 U.S.C. 504(c)(1); 42 U.S.C. 3535(d).

§ 14.115 [Amended]

■ 4. Amend § 14.115 by removing and reserving paragraph (a)(5).

■ 5. Add part 75 to read as follows:

PART 75—ECONOMIC OPPORTUNITIES FOR LOW- AND VERY LOW-INCOME PERSONS

Subpart A—General Provisions

Sec.

75.1 Purpose.

75.3 Applicability.

75.5 Definitions.

75.7 Requirements applicable to HUD NOFAs for Section 3 covered programs.

Subpart B—Additional Provisions for Public Housing Financial Assistance

75.9 Requirements.

75.11 Targeted Section 3 worker for public housing financial assistance.

75.13 Section 3 safe harbor.

75.15 Reporting.

75.17 Contract provisions.

Subpart C—Additional Provisions for Housing and Community Development Financial Assistance

75.19 Requirements.

75.21 Targeted Section 3 worker for housing and community development financial assistance.

75.23 Section 3 safe harbor.

75.25 Reporting.

75.27 Contract provisions.

Subpart D—Provisions for Multiple Funding Sources, Recordkeeping and Compliance

75.29 Multiple funding sources.

75.31 Recordkeeping.

75.33 Compliance.

Authority: 12 U.S.C. 1701u; 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 75.1 Purpose.

This part establishes the requirements to be followed to ensure the objectives of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C.

1701u) (Section 3) are met. The purpose of Section 3 is to ensure that economic opportunities, most importantly employment, generated by certain HUD financial assistance shall be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing or residents of the community in which the Federal assistance is spent.

§ 75.3 Applicability.

(a) *General applicability.* Section 3 applies to public housing financial assistance and Section 3 projects, as follows:

(1) *Public housing financial assistance.* Public housing financial assistance means:

(i) Development assistance provided pursuant to section 5 of the United States Housing Act of 1937 (the 1937 Act);

(ii) Operations and management assistance provided pursuant to section 9(e) of the 1937 Act;

(iii) Development, modernization, and management assistance provided pursuant to section 9(d) of the 1937 Act; and

(iv) The entirety of a mixed-finance development project as described in 24 CFR 905.604, regardless of whether the project is fully or partially assisted with public housing financial assistance as defined in paragraphs (a)(1)(i) through (iii) of this section.

(2) *Section 3 projects.* (i) Section 3 projects means housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of \$200,000. The threshold is \$100,000 where the assistance is from the Lead Hazard Control and Healthy Homes programs, as authorized by Sections 501 or 502 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–1 or 1701z–2), the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 *et seq.*); and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 *et seq.*). The project is the site or sites together with any building(s) and improvements located on the site(s) that are under common ownership, management, and financing.

(ii) The Secretary must update the thresholds provided in paragraph (a)(2)(i) of this section not less than once every 5 years based on a national construction cost inflation factor through **Federal Register** notice not subject to public comment. When the Secretary finds it is warranted to ensure

compliance with Section 3, the Secretary may adjust, regardless of the national construction cost factor, such thresholds through **Federal Register** notice, subject to public comment.

(iii) The requirements in this part apply to an entire Section 3 project, regardless of whether the project is fully or partially assisted under HUD programs that provide housing and community development financial assistance.

(b) *Contracts for materials.* Section 3 requirements do not apply to material supply contracts.

(c) *Indian and Tribal preferences.* Contracts, subcontracts, grants, or subgrants subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)) or subject to tribal preference requirements as authorized under 101(k) of the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4111(k)) must provide preferences in employment, training, and business opportunities to Indians and Indian organizations, and are therefore not subject to the requirements of this part.

(d) *Other HUD assistance and other Federal assistance.* Recipients that are not subject to Section 3 are encouraged to consider ways to support the purpose of Section 3.

§ 75.5 Definitions.

The terms *HUD*, *Public housing*, and *Public Housing Agency (PHA)* are defined in 24 CFR part 5. The following definitions also apply to this part:

1937 Act means the United States Housing Act of 1937, 42 U.S.C. 1437 *et seq.*

Contractor means any entity entering into a contract with:

(1) A recipient to perform work in connection with the expenditure of public housing financial assistance or for work in connection with a Section 3 project; or

(2) A subrecipient for work in connection with a Section 3 project.

Labor hours means the number of paid hours worked by persons on a Section 3 project or by persons employed with funds that include public housing financial assistance.

Low-income person means a person as defined in Section 3(b)(2) of the 1937 Act.

Material supply contracts means contracts for the purchase of products and materials, including, but not limited to, lumber, drywall, wiring, concrete, pipes, toilets, sinks, carpets, and office supplies.

Professional services means non-construction services that require an

advanced degree or professional licensing, including, but not limited to, contracts for legal services, financial consulting, accounting services, environmental assessment, architectural services, and civil engineering services.

Public housing financial assistance means assistance as defined in § 75.3(a)(1).

Public housing project is defined in 24 CFR 905.108.

Recipient means any entity that receives directly from HUD public housing financial assistance or housing and community development assistance that funds Section 3 projects, including, but not limited to, any State, local government, instrumentality, PHA, or other public agency, public or private nonprofit organization.

Section 3 means Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

Section 3 business concern means:

(1) A business concern meeting at least one of the following criteria, documented within the last six-month period:

(i) It is at least 51 percent owned and controlled by low- or very low-income persons;

(ii) Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or

(iii) It is a business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

(2) The status of a Section 3 business concern shall not be negatively affected by a prior arrest or conviction of its owner(s) or employees.

(3) Nothing in this part shall be construed to require the contracting or subcontracting of a Section 3 business concern. Section 3 business concerns are not exempt from meeting the specifications of the contract.

Section 3 project means a project defined in § 75.3(a)(2).

Section 3 worker means:

(1) Any worker who currently fits or when hired within the past five years fit at least one of the following categories, as documented:

(i) The worker's income for the previous or annualized calendar year is below the income limit established by HUD.

(ii) The worker is employed by a Section 3 business concern.

(iii) The worker is a YouthBuild participant.

(2) The status of a Section 3 worker shall not be negatively affected by a prior arrest or conviction.

(3) Nothing in this part shall be construed to require the employment of

someone who meets this definition of a Section 3 worker. Section 3 workers are not exempt from meeting the qualifications of the position to be filled.

Section 8-assisted housing refers to housing receiving project-based rental assistance or tenant-based assistance under Section 8 of the 1937 Act.

Service area or the neighborhood of the project means an area within one mile of the Section 3 project or, if fewer than 5,000 people live within one mile of a Section 3 project, within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census.

Small PHA means a public housing authority that manages or operates fewer than 250 public housing units.

Subcontractor means any entity that has a contract with a contractor to undertake a portion of the contractor's obligation to perform work in connection with the expenditure of public housing financial assistance or for a Section 3 project.

Subrecipient has the meaning provided in the applicable program regulations or in 2 CFR 200.93.

Targeted Section 3 worker has the meanings provided in §§ 75.11, 75.21, or 75.29, and does not exclude an individual that has a prior arrest or conviction.

Very low-income person means the definition for this term set forth in section 3(b)(2) of the 1937 Act.

YouthBuild programs refers to YouthBuild programs receiving assistance under the Workforce Innovation and Opportunity Act (29 U.S.C. 3226).

§ 75.7 Requirements applicable to HUD NOFAs for Section 3 covered programs.

All notices of funding availability (NOFAs) issued by HUD that announce the availability of funding covered by § 75.3 will include notice that this part is applicable to the funding and may include, as appropriate for the specific NOFA, points or bonus points for the quality of Section 3 plans.

Subpart B—Additional Provisions for Public Housing Financial Assistance

§ 75.9 Requirements.

(a) *Employment and training.* (1) Consistent with existing Federal, state, and local laws and regulations, PHAs or other recipients receiving public housing financial assistance, and their contractors and subcontractors, must make their best efforts to provide employment and training opportunities generated by the public housing

financial assistance to Section 3 workers.

(2) PHAs or other recipients, and their contractors and subcontractors, must make their best efforts described in paragraph (a)(1) of this section in the following order of priority:

(i) To residents of the public housing projects for which the public housing financial assistance is expended;

(ii) To residents of other public housing projects managed by the PHA that is providing the assistance or for residents of Section 8-assisted housing managed by the PHA;

(iii) To participants in YouthBuild programs; and

(iv) To low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the assistance is expended.

(b) *Contracting.* (1) Consistent with existing Federal, state, and local laws and regulations, PHAs and other recipients of public housing financial assistance, and their contractors and subcontractors, must make their best efforts to award contracts and subcontracts to business concerns that provide economic opportunities to Section 3 workers.

(2) PHAs and other recipients, and their contractors and subcontractors, must make their best efforts described in paragraph (b)(1) of this section in the following order of priority:

(i) To Section 3 business concerns that provide economic opportunities for residents of the public housing projects for which the assistance is provided;

(ii) To Section 3 business concerns that provide economic opportunities for residents of other public housing projects or Section-8 assisted housing managed by the PHA that is providing the assistance;

(iii) To YouthBuild programs; and

(iv) To Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the assistance is provided.

§ 75.11 Targeted Section 3 worker for public housing financial assistance.

(a) *Targeted Section 3 worker.* A Targeted Section 3 worker for public housing financial assistance means a Section 3 worker who is:

(1) A worker employed by a Section 3 business concern; or

(2) A worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years:

(i) A resident of public housing or Section 8-assisted housing;

(ii) A resident of other public housing projects or Section 8-assisted housing managed by the PHA that is providing the assistance; or

(iii) A YouthBuild participant.

(b) [Reserved]

§ 75.13 Section 3 safe harbor.

(a) *General.* PHAs and other recipients will be considered to have complied with requirements in this part, in the absence of evidence to the contrary, if they:

(1) Certify that they have followed the prioritization of effort in § 75.9; and

(2) Meet or exceed the applicable Section 3 benchmarks as described in paragraph (b) of this section.

(b) *Establishing benchmarks.* (1) HUD will establish Section 3 benchmarks for Section 3 workers or Targeted Section 3 workers or both through a document published in the **Federal Register**. HUD may establish a single nationwide benchmark for Section 3 workers and a single nationwide benchmark for Targeted Section 3 workers, or may establish multiple benchmarks based on geography, the type of public housing financial assistance, or other variables. HUD will update the benchmarks through a document published in the **Federal Register**, subject to public comment, not less frequently than once every 3 years. Such notice shall include aggregate data on labor hours and the proportion of PHAs and other recipients meeting benchmarks, as well as other metrics reported pursuant to § 75.15 as deemed appropriate by HUD, for the 3 most recent reporting years.

(2) In establishing the Section 3 benchmarks, HUD may consider the industry averages for labor hours worked by specific categories of workers or in different localities or regions; averages for labor hours worked by Section 3 workers and Targeted Section 3 workers as reported by recipients pursuant to this section; and any other factors HUD deems important. In establishing the Section 3 benchmarks, HUD will exclude professional services from the total number of labor hours as such hours are excluded from the total number of labor hours to be reported per § 75.15(a)(4).

(3) Section 3 benchmarks will consist of the following two ratios:

(i) The number of labor hours worked by Section 3 workers divided by the total number of labor hours worked by all workers funded by public housing financial assistance in the PHA's or other recipient's fiscal year.

(ii) The number of labor hours worked by Targeted Section 3 workers, as defined in § 75.11(a), divided by the total number of labor hours worked by

all workers funded by public housing financial assistance in the PHA's or other recipient's fiscal year.

§ 75.15 Reporting.

(a) *Reporting of labor hours.* (1) For public housing financial assistance, PHAs and other recipients must report in a manner prescribed by HUD:

(i) The total number of labor hours worked;

(ii) The total number of labor hours worked by Section 3 workers; and

(iii) The total number of labor hours worked by Targeted Section 3 workers.

(2) Section 3 workers' and Targeted Section 3 workers' labor hours may be counted for five years from when their status as a Section 3 worker or Targeted Section 3 worker is established pursuant to § 75.31.

(3) The labor hours reported under paragraph (a)(1) of this section must include the total number of labor hours worked with public housing financial assistance in the fiscal year of the PHA or other recipient, including labor hours worked by any contractors and subcontractors that the PHA or other recipient is required, or elects pursuant to paragraph (a)(4) of this section, to report.

(4) PHAs and other recipients reporting under this section, as well as contractors and subcontractors who report to PHAs and recipients, may report labor hours by Section 3 workers, under paragraph (a)(1)(ii) of this section, and labor hours by Targeted Section 3 workers, under paragraph (a)(1)(iii) of this section, from professional services without including labor hours from professional services in the total number of labor hours worked under paragraph (a)(1)(i) of this section. If a contract covers both professional services and other work and the PHA, other recipient, contractor, or subcontractor chooses not to report labor hours from professional services, the labor hours under the contract that are not from professional services must still be reported.

(5) PHAs and other recipients may report on the labor hours of the PHA, the recipient, a contractor, or a subcontractor based on the employer's good faith assessment of the labor hours of a full-time or part-time employee informed by the employer's existing salary or time and attendance based payroll systems, unless the project or activity is otherwise subject to requirements specifying time and attendance reporting.

(b) *Additional reporting if Section 3 benchmarks are not met.* If the PHA's or other recipient's reporting under paragraph (a) of this section indicates

that the PHA or other recipient has not met the Section 3 benchmarks described in § 75.13, the PHA or other recipient must report in a form prescribed by HUD on the qualitative nature of its Section 3 compliance activities and those of its contractors and subcontractors. Such qualitative efforts may, for example, include but are not limited to the following:

(1) Engaged in outreach efforts to generate job applicants who are Targeted Section 3 workers.

(2) Provided training or apprenticeship opportunities.

(3) Provided technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).

(4) Provided or connected Section 3 workers with assistance in seeking employment including: drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.

(5) Held one or more job fairs.

(6) Provided or referred Section 3 workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, child care).

(7) Provided assistance to apply for/or attend community college, a four-year educational institution, or vocational/technical training.

(8) Assisted Section 3 workers to obtain financial literacy training and/or coaching.

(9) Engaged in outreach efforts to identify and secure bids from Section 3 business concerns.

(10) Provided technical assistance to help Section 3 business concerns understand and bid on contracts.

(11) Divided contracts into smaller jobs to facilitate participation by Section 3 business concerns.

(12) Provided bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.

(13) Promoted use of business registries designed to create opportunities for disadvantaged and small businesses.

(14) Outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.

(c) *Reporting frequency.* Unless otherwise provided, PHAs or other recipients must report annually to HUD under paragraph (a) of this section, and, where required, under paragraph (b) of this section, in a manner consistent with reporting requirements for the applicable HUD program.

(d) *Reporting by Small PHAs.* Small PHAs may elect not to report under

paragraph (a) of this section. Small PHAs that make such election are required to report on their qualitative efforts, as described in paragraph (b) of this section, in a manner consistent with reporting requirements for the applicable HUD program.

§ 75.17 Contract provisions.

(a) PHAs or other recipients must include language in any agreement or contract to apply Section 3 to contractors.

(b) PHAs or other recipients must require contractors to include language in any contract or agreement to apply Section 3 to subcontractors.

(c) PHAs or other recipients must require all contractors and subcontractors to meet the requirements of § 75.9, regardless of whether Section 3 language is included in contracts.

Subpart C—Additional Provisions for Housing and Community Development Financial Assistance

§ 75.19 Requirements.

(a) *Employment and training.* (1) To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, recipients covered by this subpart shall ensure that employment and training opportunities arising in connection with Section 3 projects are provided to Section 3 workers within the metropolitan area (or nonmetropolitan county) in which the project is located.

(2) Where feasible, priority for opportunities and training described in paragraph (a)(1) of this section should be given to:

(i) Section 3 workers residing within the service area or the neighborhood of the project, and

(ii) Participants in YouthBuild programs.

(b) *Contracting.* (1) To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, recipients covered by this subpart shall ensure contracts for work awarded in connection with Section 3 projects are provided to business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the project is located.

(2) Where feasible, priority for contracting opportunities described in paragraph (b)(1) of this section should be given to:

(i) Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the project, and

(ii) YouthBuild programs.

§ 75.21 Targeted Section 3 worker for housing and community development financial assistance.

(a) *Targeted Section 3 worker.* A Targeted Section 3 worker for housing and community development financial assistance means a Section 3 worker who is:

(1) A worker employed by a Section 3 business concern; or

(2) A worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years:

(i) Living within the service area or the neighborhood of the project, as defined in § 75.5; or

(ii) A YouthBuild participant.

(b) [Reserved]

§ 75.23 Section 3 safe harbor.

(a) *General.* Recipients will be considered to have complied with requirements in this part, in the absence of evidence to the contrary if they:

(1) Certify that they have followed the prioritization of effort in § 75.19; and

(2) Meet or exceed the applicable Section 3 benchmark as described in paragraph (b) of this section.

(b) *Establishing benchmarks.* (1) HUD will establish Section 3 benchmarks for Section 3 workers or Targeted Section 3 workers or both through a document published in the **Federal Register**. HUD may establish a single nationwide benchmark for Section 3 workers and a single nationwide benchmark for Targeted Section 3 workers, or may establish multiple benchmarks based on geography, the nature of the Section 3 project, or other variables. HUD will update the benchmarks through a document published in the **Federal Register**, subject to public comment, not less frequently than once every 3 years. Such notice shall include aggregate data on labor hours and the proportion of recipients meeting benchmarks, as well as other metrics reported pursuant to § 75.25 as deemed appropriate by HUD, for the 3 most recent reporting years.

(2) In establishing the Section 3 benchmarks, HUD may consider the industry averages for labor hours worked by specific categories of workers or in different localities or regions; averages for labor hours worked by Section 3 workers and Targeted Section 3 workers as reported by recipients pursuant to this section; and any other factors HUD deems important. In establishing the Section 3 benchmarks, HUD will exclude professional services from the total number of labor hours as such hours are excluded from the total number of labor hours to be reported per § 75.25(a)(4).

(3) Section 3 benchmarks will consist of the following two ratios:

(i) The number of labor hours worked by Section 3 workers divided by the total number of labor hours worked by all workers on a Section 3 project in the recipient's program year.

(ii) The number of labor hours worked by Targeted Section 3 workers as defined in § 75.21(a), divided by the total number of labor hours worked by all workers on a Section 3 project in the recipient's program year.

§ 75.25 Reporting.

(a) *Reporting of labor hours.* (1) For Section 3 projects, recipients must report in a manner prescribed by HUD:

(i) The total number of labor hours worked;

(ii) The total number of labor hours worked by Section 3 workers; and

(iii) The total number of labor hours worked by Targeted Section 3 workers.

(2) Section 3 workers' and Targeted Section 3 workers' labor hours may be counted for five years from when their status as a Section 3 worker or Targeted Section 3 worker is established pursuant to § 75.31.

(3) The labor hours reported under paragraph (a)(1) of this section must include the total number of labor hours worked on a Section 3 project, including labor hours worked by any subrecipients, contractors and subcontractors that the recipient is required, or elects pursuant to paragraph (a)(4) of this section, to report.

(4) Recipients reporting under this section, as well as subrecipients, contractors and subcontractors who report to recipients, may report labor hours by Section 3 workers, under paragraph (a)(1)(ii) of this section, and labor hours by Targeted Section 3 workers, under paragraph (a)(1)(iii) of this section, from professional services without including labor hours from professional services in the total number of labor hours worked under paragraph (a)(1)(i) of this section. If a contract covers both professional services and other work and the recipient or contractor or subcontractor chooses not to report labor hours from professional services, the labor hours under the contract that are not from professional services must still be reported.

(5) Recipients may report their own labor hours or that of a subrecipient, contractor, or subcontractor based on the employer's good faith assessment of the labor hours of a full-time or part-time employee informed by the employer's existing salary or time and attendance based payroll systems, unless the project or activity is

otherwise subject to requirements specifying time and attendance reporting.

(b) *Additional reporting if Section 3 benchmarks are not met.* If the recipient's reporting under paragraph (a) of this section indicates that the recipient has not met the Section 3 benchmarks described in § 75.23, the recipient must report in a form prescribed by HUD on the qualitative nature of its activities and those its contractors and subcontractors pursued. Such qualitative efforts may, for example, include but are not limited to the following:

(1) Engaged in outreach efforts to generate job applicants who are Targeted Section 3 workers.

(2) Provided training or apprenticeship opportunities.

(3) Provided technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).

(4) Provided or connected Section 3 workers with assistance in seeking employment including: drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.

(5) Held one or more job fairs.

(6) Provided or referred Section 3 workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, child care).

(7) Provided assistance to apply for/or attend community college, a four-year educational institution, or vocational/technical training.

(8) Assisted Section 3 workers to obtain financial literacy training and/or coaching.

(9) Engaged in outreach efforts to identify and secure bids from Section 3 business concerns.

(10) Provided technical assistance to help Section 3 business concerns understand and bid on contracts.

(11) Divided contracts into smaller jobs to facilitate participation by Section 3 business concerns.

(12) Provided bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.

(13) Promoted use of business registries designed to create opportunities for disadvantaged and small businesses.

(14) Outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.

(c) *Reporting frequency.* Unless otherwise provided, recipients must report annually to HUD under paragraph (a) of this section, and, where

required, under paragraph (b) of this section, on all projects completed within the reporting year in a manner consistent with reporting requirements for the applicable HUD program.

§ 75.27 Contract provisions.

(a) Recipients must include language applying Section 3 requirements in any subrecipient agreement or contract for a Section 3 project.

(b) Recipients of Section 3 funding must require subrecipients, contractors, and subcontractors to meet the requirements of § 75.19, regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.

Subpart D—Provisions for Multiple Funding Sources, Recordkeeping, and Compliance

§ 75.29 Multiple funding sources.

(a) If a housing rehabilitation, housing construction or other public construction project is subject to Section 3 pursuant to § 75.3(a)(1) and (2), the recipient must follow subpart B of this part for the public housing financial assistance and may follow either subpart B or C of this part for the housing and community development financial assistance. For such a project, the following applies:

(1) For housing and community development financial assistance, a Targeted Section 3 worker is any worker who meets the definition of a Targeted Section 3 worker in either subpart B or C of this part; and

(2) The recipients of both sources of funding shall report on the housing rehabilitation, housing construction, or other public construction project as a whole and shall identify the multiple associated recipients. PHAs and other recipients must report the following information:

(i) The total number of labor hours worked on the project;

(ii) The total number of labor hours worked by Section 3 workers on the project; and

(iii) The total number of labor hours worked by Targeted Section 3 workers on the project.

(b) If a housing rehabilitation, housing construction, or other public construction project is subject to Section 3 because the project is assisted with funding from multiple sources of housing and community development assistance that exceed the thresholds in § 75.3(a)(2), the recipient or recipients must follow subpart C of this part, and must report to the applicable HUD program office, as prescribed by HUD.

§ 75.31 Recordkeeping.

(a) HUD shall have access to all records, reports, and other documents or items of the recipient that are maintained to demonstrate compliance with the requirements of this part, or that are maintained in accordance with the regulations governing the specific HUD program by which the Section 3 project is governed, or the public housing financial assistance is provided or otherwise made available to the recipient, subrecipient, contractor, or subcontractor.

(b) Recipients must maintain documentation, or ensure that a subrecipient, contractor, or subcontractor that employs the worker maintains documentation, to ensure that workers meet the definition of a Section 3 worker or Targeted Section 3 worker, at the time of hire or the first reporting period, as follows:

(1) For a worker to qualify as a Section 3 worker, one of the following must be maintained:

(i) A worker's self-certification that their income is below the income limit from the prior calendar year;

(ii) A worker's self-certification of participation in a means-tested program such as public housing or Section 8-assisted housing;

(iii) Certification from a PHA, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;

(iv) An employer's certification that the worker's income from that employer is below the income limit when based on an employer's calculation of what the worker's wage rate would translate to if annualized on a full-time basis; or

(v) An employer's certification that the worker is employed by a Section 3 business concern.

(2) For a worker to qualify as a Targeted Section 3 worker, one of the following must be maintained:

(i) For a worker to qualify as a Targeted Section 3 worker under subpart B of this part:

(A) A worker's self-certification of participation in public housing or Section 8-assisted housing programs;

(B) Certification from a PHA, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;

(C) An employer's certification that the worker is employed by a Section 3 business concern; or

(D) A worker's certification that the worker is a YouthBuild participant.

(ii) For a worker to qualify as a Targeted Section 3 worker under subpart C of this part:

(A) An employer's confirmation that a worker's residence is within one mile of the work site or, if fewer than 5,000 people live within one mile of a work site, within a circle centered on the work site that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census;

(B) An employer's certification that the worker is employed by a Section 3 business concern; or

(C) A worker's self-certification that the worker is a YouthBuild participant.

(c) The documentation described in paragraph (b) of this section must be maintained for the time period required for record retentions in accordance with applicable program regulations or, in the absence of applicable program regulations, in accordance with 2 CFR part 200.

(d) A PHA or recipient may report on Section 3 workers and Targeted Section 3 workers for five years from when their certification as a Section 3 worker or Targeted Section 3 worker is established.

§ 75.33 Compliance.

(a) *Records of compliance.* Each recipient shall maintain adequate records demonstrating compliance with this part, consistent with other recordkeeping requirements in 2 CFR part 200.

(b) *Complaints.* Complaints alleging failure of compliance with this part may be reported to the HUD program office responsible for the public housing financial assistance or the Section 3 project, or to the local HUD field office.

(c) *Monitoring.* HUD will monitor compliance with the requirements of this part. The applicable HUD program office will determine appropriate methods by which to oversee Section 3 compliance. HUD may impose appropriate remedies and sanctions in accordance with the laws and regulations for the program under which the violation was found.

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

■ 6. The authority citation for part 91 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

§ 91.215 [Amended]

■ 7. Amend § 91.215(j) by removing “24 CFR part 135” and adding, in its place “24 CFR part 75”.

§ 91.225 [Amended]

■ 8. Amend § 91.225(a)(7) by removing “24 CFR part 135” and adding, in its place “24 CFR part 75”.

§ 91.325 [Amended]

■ 9. Amend § 91.325(a)(7) by removing “24 CFR part 135” and adding, in its place “24 CFR part 75”.

§ 91.425 [Amended]

■ 10. Amend § 91.425(a)(1)(vii) by removing “24 CFR part 135” and adding, in its place “24 CFR part 75”.

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

■ 11. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 12 U.S.C. 1701x and 4568.

■ 12. Amend § 92.508 as follows:

- a. Remove paragraph (a)(7)(i)(B);
 - b. Redesignate paragraph (a)(7)(i)(C) as (a)(7)(i)(B); and
 - c. Add paragraph (a)(7)(xi).
- The addition reads as follows:

§ 92.508 Recordkeeping.

(a) * * *

(7) * * *

(xi) Documentation of actions undertaken to meet the requirements of 24 CFR part 75 which implements section 3 of the Housing Development Act of 1968, as amended (12 U.S.C. 1701u).

* * * * *

PART 93—HOUSING TRUST FUND

■ 13. The authority citation for part 93 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 12 U.S.C. 4568.

■ 14. Amend § 93.407 as follows:

- a. Redesignate paragraphs (a)(5)(ii) through (ix) as paragraphs (a)(5)(iii) through (x);
 - b. Remove paragraph (a)(5)(i)(B);
 - c. Redesignate paragraph (a)(5)(i)(A) as paragraph (a)(5)(ii);
 - d. In newly redesignated paragraph (a)(5)(iv), remove “24 part 35” and add in its place “24 CFR part 35”; and
 - e. Add paragraph (a)(5)(xi).
- The addition reads as follows:

§ 93.407 Recordkeeping.

(a) * * *

(5) * * *

(xi) Documentation of actions undertaken to meet the requirements of 24 CFR part 75, which implements section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

* * * * *

CHAPTER I—OFFICE OF ASSISTANT SECRETARY FOR EQUAL OPPORTUNITY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT [AMENDED]

■ 15. Under the authority of 42 U.S.C. 3535(d), in chapter I, remove designated subchapter headings A and B.

PART 135 —[REMOVED]

■ 16. Remove part 135.

PART 266—HOUSING FINANCE AGENCY RISK-SHARING PROGRAM FOR INSURED AFFORDABLE MULTIFAMILY PROJECT LOANS

■ 17. The authority citation for part 266 continues to read as follows:

Authority: 12 U.S.C. 1707; 42 U.S.C. 3535(d).

§ 266.220 [Amended]

■ 18. Amend § 266.220(c) by removing “; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), as implemented by 24 CFR part 135”.

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

■ 19. The authority citation for part 570 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x–1; 42 U.S.C. 3535(d) and 5301–5320.

§ 570.487 [Amended]

■ 20. Amend § 570.487(d) by removing “24 CFR part 135” and adding in its place “24 CFR part 75”.

§ 570.607 [Amended]

■ 21. Amend § 570.607(b) by removing “24 CFR part 135” and adding in its place “24 CFR part 75”.

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

■ 22. The authority citation for part 574 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x–1; 42 U.S.C. 3535(d) and 5301–5320.

§ 574.600 [Amended]

■ 23. Amend § 574.600 by adding “and part 75” after the phrase “24 CFR part 5”.

PART 576—EMERGENCY SOLUTIONS GRANTS PROGRAM

■ 24. The authority citation for part 576 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x–1; 42 U.S.C. 11371 *et seq.*, 42 U.S.C. 3535(d).

§ 576.407 [Amended]

- 25. Amend § 576.407(a) by removing “24 CFR part 135” and adding in its place “24 CFR part 75”.

PART 578—CONTINUUM OF CARE PROGRAM

- 26. The authority citation for part 578 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x–1; 42 U.S.C. 11381 *et seq.*, 42 U.S.C. 3535(d).

§ 578.99 [Amended]

- 27. Amend § 578.99 by removing “federal” in the section heading and adding in its place “Federal” and removing “24 CFR part 135” in paragraph (i) and adding in its place “24 CFR part 75”.

PART 905—THE PUBLIC HOUSING CAPITAL FUND PROGRAM

- 28. The authority citation for part 905 continues to read as follows:

Authority: 42 U.S.C. 1437g, 42 U.S.C. 1437z–2, 42 U.S.C. 1437z–7, and 3535(d).

§ 905.308 [Amended]

- 29. Amend § 905.308(b)(10) by removing “24 CFR part 135” and adding in its place “24 CFR part 75”.

PART 964—TENANT PARTICIPATION AND TENANT OPPORTUNITIES IN PUBLIC HOUSING

- 30. The authority citation for part 964 continues to read as follows:

Authority: 42 U.S.C. 1437d, 1437g, 1437r, 3535(d).

- 31. Revise § 964.320 to read as follows:

§ 964.320 HUD Policy on training, employment, contracting and subcontracting of public housing residents.

In accordance with Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR part 75, PHAs, their contractors and subcontractors shall make best efforts, consistent with existing Federal, State, and local laws and regulations, to give low and very low-income persons the training and employment opportunities generated by Section 3 covered assistance (as this term is defined in 24 CFR 75.3) and to give Section 3 business concerns the contracting opportunities generated by Section 3 covered assistance.

PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM

- 32. The authority citation for part 983 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

§ 983.4 [Amended]

- 33. Amend § 983.4 by removing the definition of “Section 3—Training, employment and contracting opportunities in development”.

§ 983.154 [Amended]

- 34. Amend § 983.154 by removing (c) introductory text and paragraph (c)(1) and redesignating paragraph (c)(2) as paragraph (c).

PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES

- 35. The authority citation for part 1000 continues to read as follows:

Authority: 25 U.S.C. 4101 *et seq.*; 42 U.S.C. 3535(d).

- 36. Revise § 1000.42 to read as follows:

§ 1000.42 Are the requirements of Section 3 of the Housing and Urban Development Act of 1968 applicable?

No. Recipients shall comply with Indian preference requirements of Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)), or employment and contract preference laws adopted by the recipient’s tribe in accordance with Section 101(k) of NAHASDA.

Benjamin S. Carson, Sr.,

Secretary.

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